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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

No. 72-848

UNITED STATES DEPARTMENT OF AGRICULTURE, *et al.*,

Appellants,

v.

LULA MAE MURRY, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLEES

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BRIEF FOR APPELLEES

QUESTIONS PRESENTED

1. Whether the appellees have standing to challenge the Constitutionality of the Food Stamp Act's tax dependency provision.

2. Whether the discriminatory tax dependency provisions in the Food Stamp Act and regulations—which deny essential food aid on the conclusive but erroneous presumption that households, containing a "tax dependent" of the previous year, have access to nutritional adequacy—contravenes appellees' rights to equal protection insofar as the provisions are arbitrary and capricious and have no reasonable relationship to the achievement of permissible governmental purposes, thereby violating the Fifth Amendment to the United States Constitution.

3. Whether the tax dependency provisions—which deny food stamp aid to all members of households which contain a person who was written off as a "tax dependent" for the previous tax year—violate appellees' rights to procedural due process by establishing a conclusive, irrebuttable and erroneous presumption that appellees are neither poor nor in need of food relief thereby violating the Fifth Amendment to the United States Constitution.

STATEMENT OF THE CASE

The Food Stamp Act [7 U.S.C. §§2011 *et seq.*] was passed by Congress in 1964 [P.L. 88-525 (August 31, 1964), 78 Stat. 703] and substantially amended in 1971 [P.L. 91-671 (Jan. 11, 1971), 84 Stat. 2048]. The Program established under that Act constitutes the Federal Government's most far-reaching effort to remedy the widespread conditions of undernutrition and hunger in this nation. As reflected in the Act's Declaration of Policy [7 U.S.C. §2011], Congress sought to raise levels of nutrition among low-income households, thereby permitting them to obtain a decent diet. Today, the Food Stamp Program provides its twelve million participants

with their only hope of escaping the ravages of hunger and malnutrition.

The operation of the Food Stamp Program is as follows: a poverty-stricken household is charged a certain amount of money in exchange for which it receives food stamps of greater value. The difference between the value of the stamps received—the coupon allotment—and the cost of the stamps is a bonus which provides recipients with a direct increase in food purchasing power. The stamps may be used to purchase domestic food, other than liquor and tobacco, at grocery stores certified by the Agriculture Department to sell food for stamps.

In recognition of the fact that many impoverished non-welfare recipients need food assistance in order to sustain their health, and because welfare recipients are not legally entitled to obtain their full nutritional and other needs through the public assistance programs [see *Rosado v. Wyman*, 397 U.S. 397, 413-415 (1970); *Dandridge v. Williams*, 397 U.S. 471, 478-480, 482-483 (1970); *Jefferson v. Hackney*, 406 U.S. 535, 539-545 (1972)], Congress established the Food Stamp Program to provide indigents with their important food needs. Due to the restrictive coverage and benefit levels of the public assistance programs, Congress sought to assure that needy households would be guaranteed adequate nutrition through the Food Stamp Program: Congress required that "[t]he face value of the coupon allotment which state agencies shall be authorized to issue to any households certified as eligible to participate in the food stamp program shall be in such amount as the Secretary determines to be the cost of a nutritionally adequate diet. . .' [7 U.S.C. §2016(a)]

Participation in the Food Stamp Program has been always on a household basis. Since the passage of P.L.

91-671, household eligibility in the Program has been based on two criteria:[1] (1) the household must be *currently needy* [7 U.S.C. §2014(b); 7 C.F.R. §§271.3(c) and 271.4(a)(4)]; and (2) certain members of the household must register for, and accept, suitable work. [7 U.S.C. §2014(c); 7 C.F.R. §271.3(e)] If a household is *currently needy* and complies with the work requirement, then such a household is entitled to food stamp relief. [7 U.S.C. §2013(a)]

The tax dependency provision here at issue is contained in, and is a part of, the need eligibility requirement of the Program. [7 U.S.C. §2014(b)] As is set forth more fully below, Congress conclusively, irrebuttably and erroneously determined that statutory "tax dependents" have current access to sufficient income in order to obtain a nutritionally adequate diet. Even the sparse legislative history on the tax dependency provision unequivocally verifies that the provision was designed as part of the resource and "income eligibility" standards of the Program [House Report No. 91-1402, 91st Cong., 2d Sess. (1970), at 8; see, also, Cong. Rec., 91st Cong., 2d Sess. (Daily Edition, Dec. 16, 1970) at H 11861], and Congress irrebuttably determined that statutory "tax dependents" have access to nutritional adequacy. An examination of the provision, however, shows how

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[1] Section 5 of the Act sets forth in the nationwide household eligibility criteria for the Program. [7 U.S.C. §2014] Subsection (a) sets forth the overall policy for the two specific eligibility requirements: "... participation in the food stamp program shall be limited to those households whose income and other financial resources are determined to be substantial limiting factors in permitting them to purchase a nutritionally adequate diet." Subsection (b) then sets forth the need eligibility criteria, including the provision here at issue, and subsection (c) sets forth the work eligibility requirement.

erroneous that irrebuttable presumption is and unequivocally demonstrates that the provision is irrationally related to—and completely frustrates—the Program's purpose of providing food aid to *households which are currently needy*.

The tax dependency provision of the Food Stamp Act states:

> . . . Any household which includes a member who has reached his eighteenth birthday and who is claimed as a dependent child for Federal income tax purposes by a taxpayer who is not a member of an eligible household, shall be ineligible to participate in any food stamp program established pursuant to this chapter during the tax period such dependency is claimed and for a period of one year after expiration of such tax period. . . . [7 U.S.C. §2014(b)]

Under the literal terms of the provision, therefore, a "tax dependent's" entire household is eliminated from Food Stamp Program eligibility for two distinct periods of time: (1) during the tax year for which the dependency was claimed; and (2) during the twelve months following that tax year. During these periods of time, the statute conclusively presumes that the "tax dependent's" household is not needy and has access to nutritional adequacy. *In practical operation, however, even under the best of all circumstances*, the provision is wholly unrelated to a household's current needs and is, under optimum conditions, only tenuously related to a household's past needs. An analysis of the provision's operation is illustrative.

A tax dependency claim for a particular year does not eliminate a "dependent" household from Food Stamp Program participation during that year. This is because, as the appellants admit, "most people . . . file their income tax in April or some time in the beginning of the year *for*

the previous tax year." [See Appendix B to this Brief, at 17b] (emphasis added) Therefore, when the dependency claim is filed (e.g. in April 1972 for tax year 1971), the year for which the dependency claim is made already has passed, and the claim has no bearing on the "dependent" household's eligibility during that year: the "dependent's" household already will have received its food stamps for that year. With regard, then, to the first period of statutory Program ineligibility—"during the tax year such dependency is claimed" [7 U.S.C. §2014(b)]—the provision operates as an entire nullity; its operation is wholly unrelated to present needs and circumstances. *The provision operates to exclude "dependent" households only during the second period of statutory Program ineligibility—the year after the expiration of the tax period for which the dependency was claimed.*

Contrary to the Program's purpose of satisfying *current food needs,* therefore, the tax dependency provision operates exclusively on the basis of circumstances during the *past tax year.*[2] Like all of the appellees herein, the provision excludes indigents from Food Stamp Program participation only during the one year

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[2]In contrast to the tax dependency provision, the Program's entire operation is based on households' current status and need. Short certification periods are established so that eligibility can be determined on a flexibility reliable and current basis. [7 C.F.R. §271.4(a)(4)] As a result, income eligibility is determined on a current basis as is resource eligibility. Consequently, a household that was not poor in the previous year, currently is entitled to food stamp aid if it is presently impoverished. Similarly, the work eligibility provision is based on household members' current compliance with the work requirement; even if a household member wrongfully refused a job in the past, if such member presently complies with the requirement, the household is eligible for food stamps. [7 C.F.R. §271.3 (e)(2)(i)]

after the period for which the tax dependency was claimed. Clearly, therefore, the provision operates wholly without regard to present circumstances and has no relationship to any assessment of a household's current food needs.

Not only is the tax dependency provision unrelated to the Program's purpose of fullfilling present economic and nutritional needs, but the provision is, at best, only tenuously related to the determination of a household's past impoverished circumstances. The reasons for this are clear. In order to claim a person as a "tax dependent", a taxpayer need not provide the "dependent" with any minimum amount during the tax year; to make a legitimate dependency claim, the taxpayer need merely provide the "dependent" with over one-half of said "dependent's" annual income during the previous tax year, regardless of amount. [26 U.S.C. §§151(e) and 152(a)] Even though such support might be pitifully small, if that amount is more than one-half of the "dependent's" annual income, then the dependency claim legitimately can be taken.

For non-students, the provision has absolutely no relation to the determination of their past needs, let alone the past or present needs of their entire household. By definition, a non-student "tax dependent"—who is not blessed with sufficient parental resources to go to college—is, based on his own income, poor: he cannot be claimed as a "dependent" unless his income is less than $750 a year. [26 U.S.C. §§151(e) and 152(a)] Consequently, even if his parent provides him with more than half of his income, there is a substantial likelihood that the non-student "dependent" is still needy.[3] Neverthe-

[3] *Even if a non-student "dependent" made the maximum amount permissible* while retaining dependency status under the Internal Revenue Code, there would still be a substantial likelihood

less, the non-student "dependent's" household is entirely excluded from Food Stamp Program participation during the year after the period for which the dependency claim was made.

The tax dependency provision's failure to relate even to a household's past needs is further manifested by the minimum age that a "dependent" must have for the provision to operate. To be denied food stamp aid as a result of the provision, a "dependent" must be 18 years of age or older. But, contrary to the alleged thrust of the tax dependency provision, a "dependent's" attainment of 18 years of age or more has an inverse relationship to his ability to obtain adequate income and food resources from the taxpayer. This is because, as is set forth more fully below, most states—upon a child's eighteenth birthday—relieve the parents of their child support

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that the "dependent's" household is poor. Even under those optimum conditions, a parent need only to provide his child with $751 during the previous tax year in order to claim said child as a "dependent". Under those circumstances, the "dependent"—even if he lives alone—still would be deemed poor under the Food Stamp Program; if he lived with others, the household's income would likely be substantially below the need eligibility standards of the Program. Those standards currently are as follows [37 Fed. Reg. 7724 (April 19, 1972)]:

Number in Household	Annual Income
1	$2136
2	2796
3	3684
4	4476
5	5280
6	6084
7	6876
8	7680
each additional person	+636

obligations. [See Appendix A to this Brief.] Indeed, *while a majority of the states relieve parents of their child support obligations upon the child's eighteenth birthday, every state relieves parents of their general child support obligations upon the child's twenty-first birthday.* [*Id.*] To conclusively presume, therefore, that the entire "tax dependent's" household is not needy during the one year after the period for which the tax dependency claim was made—where the "dependent" himself, let alone the rest of his household, is unable to enforce any support obligation, and where the dependency claim merely implies that the "dependent" received over half of his support in the previous year from the taxpayer—flies completely in the face of reality.

Under the provision here at issue, however, a tax dependency claim for the previous year serves as a complete bar to Food Stamp Program participation by the "dependent's" household. No evidence may be adduced by members of the "dependent's" household to demonstrate, either at the application stage or at a requested hearing thereafter, that they are poor, undernourished and without access to sufficient resources to obtain adequate nutrition. [Affidavit of defendant-appellant Howard P. Davis; Appendix, at 83; See Appendix B to this Brief, at 22b-23b] Instead, the provision conclusively, irrebuttably and erroneously presumes that a household containing a "dependent" (of the previous year) is not presently needy even if household members can convincingly demonstrate that: (1) the taxpayer made a fraudulent dependency claim; (2) the support provided the "tax dependent" is so minimal as to be wholly insufficient "to purchase a nutritionally adequate diet" [7 U.S.C. §2014(a); see, also, 7 U.S.C. §§2011, 2013(a) and 2016(a)]; (3) the taxpayer presently is

unable or unwilling to contribute to the "dependent" even though contributions were made in the previous year; (4) the taxpayer indicated to the Internal Revenue Service and the Food Stamp Office that he will not file a dependency claim this year;[4] or (5) the members of the "dependent's" household receive absolutely or virtually no benefit from the contributions by the taxpayer (either because the contributions are made solely to and for the "dependent" or because the contributions to the "dependent" are so small that they cannot be apportioned to other household members).

The tax dependency provision's effect on the indigent plaintiff-appellees has been most harmful. Plaintiff-appellees are all members of needy households, finan-

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[4] Appellants seek to rationalize the inflexible one-year ineligibility carry-over by inferring that it is "the only practical means" by which to determine whether a tax dependency claim will be taken during that carry-over year. [Appellants' Brief, at 13, n. 7] Their rationalization, however, as will be demonstrated more fully hereinafter, is belied by the actual operation of the provision. Even at the end of the carry-over year (i.e. December 31), the taxpayer has not completed his income tax papers. Consequently, by the end of the carry-over year, Food Stamp Program administrators still will be unable to determine whether an actual dependency claim will be made for that year and, therefore, whether the tax dependency provision should operate. Moreover, since the applicant household's word is taken at face value (when a member thereof indicates that he or she was written off as a "dependent" for the previous tax year) [see Appendix B to this Brief, at 22b-23b], there is no reason why that household's word cannot be accepted about its likely current dependency status or, in fact, whether it has actual access to sufficient resources to obtain a nutritionally adequate diet. The statutory provision, however, is rigid and inflexible, and the former "dependent" is unable to adduce any evidence—at any stage of the administrative process—about his discontinued dependency status or his household's current impoverished circumstances.

cially eligible for food stamp relief. They comprise both public assistance and non-welfare households that would be ablt to participate in the Food Stamp Program but for the fact that their households contain one or more persons who were "tax dependents" in the previous year. They, therefore, have been denied food stamps despite their inability "to purchase a nutritionally adequate diet" [7 U.S.C. §2014(a); see, also, 7 U.S.C. §§2011, 2013(a) and 2016(a)], and despite the fact that their status as members of a former "dependent's" household results in no appreciable outside sources of income with which they can obtain such a diet.

Appellee Lula Mae Murry, for example, is a 50 year old mother residing in Bessemer, Alabama. Her household consists of five persons: appellee Murry, her two sons, and her two grandchildren. Mrs. Murry's entire monthly income is $57.50: two bi-weekly checks of $15 (or $32.50 per month) and payment of her $25 monthly rent bill. (The current monthly income eligibility criterion in the Food Stamp Program for a five-person household is $440 [37 Fed. Reg. 7724].) These funds come from her ex-husband as court-ordered child support for her sons. Appellee Murry's monthly expenditures for utilities, heat, medical bills, transportation, laundry, school supplies, clothing, hygienic needs, and food far exceed her monthly income. For the past seven years, she received food stamps in order to meet her household's substantial nutritional requirements; she received $128 in food stamps at a cost of $11, thereby obtaining $117 in monthly food benefits. Food stamp assistance was the only means with which appellee Murry could provide her household with a subsistence diet.

In April, 1972, appellee Murry was denied food stamp relief. She was informed that this aid was no longer

available because her ex-husband had claimed her (and his) two sons and one grandson as tax dependents in his 1971 income tax return. *Since her eldest son is 19 years of age,* the tax dependency provision disqualified her household from further food stamp relief. Appellee Murry's household was denied such important food aid despite the fact that: she had been divorced from her husband for more than 10 years; he had remarried and is supporting his second wife and her two children on a laborer's income; and his contribution to appellee's household amounts to $57.50 per month and constitutes appellee's sole source of income.[5]

Appellee Nancy Marie Lee is the 39 year old mother of five children residing in Decatur, Alabama. Her entire monthly income totaled $23, derived entirely from public assistance; at the time this suit was filed, she expected that her household's income would be increased modestly. (The current monthly income eligibility criterion in the Food Stamp Program for a six-person household is $507 [37 Fed. Reg. 7724].) Her month's bills, however, totaled $249, $148 of which is attributable to food costs. Because of her desperate financial situation, Mrs. Lee applied for food stamp assistance for her six-member household. With her anticipated public assistance increase included, appellee Lee's household was eligible for $148 a month in food stamps at a cost of $14. Her household was denied food stamp relief, however, solely because her husband had claimed their two oldest sons, ages 20 and 18, as "tax dependents" in his 1971 tax returns.

Mrs. Lee's husband is not a member of her household. He deserted his family and has *not* proyided his family

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[5] All of the relevant facts concerning appellee Murry's household can be found in the Appendix, at 29-31.

with support since his desertion. Appellee Lee is not even aware of her husband's whereabouts or whether he is employed. But, because her husband claimed their two oldest sons as "tax dependents", appellee Lee is forced to choose between asking her sons to leave their home or denying herself and her children sufficient nourishment. Appellee has rejected the first alternative partially because her oldest son suffers from mental retardation (and already has spent substantial time in a state mental institution) and because her second oldest son requires constant attention due to past delinquency problems. The Lee family, therefore, must face grievous conditions of hunger and undernutrition.[6]

Appellee Victoria Alderete, the 43 year old mother of five children, resides with her offspring in San Antonio, Texas. She has been divorced from her husband since January, 1968. Her monthly income is only $205, $105 of which is derived from child support payments and $100 is obtained through public assistance. (The current monthly income eligibility criterion in the Food Stamp Program for a six-person household is $507 [37 Fed. Reg. 7724].) Because of her household's indigency status, she has had great difficulty in paying for the children's necessities. However, in the past, food stamps barely enabled the appellee to provide subsistence living conditions for herself and her youngsters; she was able to purchase $144 worth of food stamps monthly at a cost of $46, thereby receiving $98 in food aid—a sum equivalent to nearly 50 percent of her entire monthly income.

In May, 1972, Mrs. Alderete was informed that her household could no longer receive food stamp relief since her ex-husband had claimed her children as "dependents"

[6] All of the relevant facts concerning appellee Lee's household can be found in the Appendix, at 32-33.

in his previous year's income tax papers. Since appellee Alderete's oldest son was 18 years old, appellee's household was disqualified from food relief because of the Food Stamp Act's tax dependency provision. As a result, all household members were denied the food aid they need in order to properly sustain themselves.[7]

Appellee Pearl R. Beavert is the mother of two teenage children who reside with her in Seattle, Washington. Appellee Beavert is divorced. The total monthly income of the Beavert household is $224, which is derived entirely from the Aid to Dependent Children Program. (The current monthly income eligibility criterion in the Food Stamp Program for a three-person household is $307 [37 Fed. Reg. 7724].) The total recurring monthly expenses for the household are $296, including: $102 in house payments; $69 in utilities; and $125 for food and household necessities. In addition to these expenses, appellee Beavert must spend money for transportation, school expenses for her children, clothing and toiletries.

Previously, appellee Beavert's household received food stamp relief which it needed, and currently needs, for substantial nourishment. The household received $88 in monthly food stamps at a cost of $58, thereby obtaining a $30 benefit. On May 26, 1972, appellee Beavert was informed that her household's food stamp benefits would be terminated because her 18 year old daughter Crystal was claimed as a "tax dependent" by Crystal's father in his 1971 Federal income tax returns. Although the family currently receives no support from Crystal's father, the Beavert household has been denied food stamp relief solely because of the previous year's income tax claim.

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[7] All of the relevant facts concerning appellee Alderete's household can be found in the Appendix, at 34-47.

Since appellee Beavert feels morally bound to support and care for her daughter, and since Crystal is going to high school, Mrs. Beavert has not forced Crystal to leave her family and home. As a result, the entire household is denied the food stamp aid that they vitally need for obtaining nutritional adequacy.[8]

Appellees Joe Ben Valdez and Isabel Valdez are both 18 years of age. They and their one month old child reside in Pueblo, Colorado. The household's total monthly income is $224, $194 of which comes from monthly public assistance grants and $30 is obtained from the Work Incentive Training Program. (The current monthly income eligibility criterion in the Food Stamp Program for a three-person household is $307 [37 Fed. Reg. 7724].) The recurring monthly expenses for appellees' household are $237, including: $80 for rent; $4 for electricity; $82 for food; $10 for clothing; $8 for insurance; $45 for transportation (gas and automobile repairs); $6 for educational expenses; and $2 for recreation. These expenses are likely to increase as the child gets older.

In order to provide proper nourishment for his family, appellee Joe Ben Valdez applied for food stamp relief. Appellee's application, however, was rejected because his father—Ben G. Valdez—had claimed him as a "dependent" in the 1971 income tax returns. Appellees Joe Ben Valdez and Isabel Valdez did not receive any support from Ben G. Valdez in 1972, and they will not receive any support in the future. This is because Ben G. Valdez is very much in debt and his indigency status leaves him with insufficient funds to support the appellees.

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[8] All of the relevant facts concerning appellee Beavert's household can be found in the Appendix, at 48-49.

Ben G. Valdez is 54 years old and resides in Pueblo, Colorado with his wife, their two daughters, and their son. Father Valdez earns $450 per month as an employee for the Colorado Fuel and Iron Corporation. (Despite his household's substantial debts and indigency status, Ben G. Valdez's $450 in monthly income is above the $440 income eligibility limit for a five-person household [37 Fed. Reg. 7724]; therefore, since his household cannot get food stamps, his previous year's tax dependency declaration of appellee Joe Ben Valdez eliminated appellee's household from food stamp relief.) Out of this income, Ben G. Valdez pays $497 in expenses, including: $180 for food; $39.50 for utilities; $20 for clothing; $23.88 for (life, automobile and fire) insurance; $22 for transportation; $20 for educational expenses; $3 for recreation; and $189 in monthly payments for debts incurred (which are cumulatively in the amount of $5,250). Because of Ben G. Valdez's prohibitively high household expenses, he is unable to provide appellees' household with any support; since Ben G. Valdez is barely able to support his wife and three children, and since he has irregular additional expenses due to his ulcers and diabetes condition, appellees Joe Ben Valdez and Isabel Valdez receive no money from him.

After appellee Joe Ben Valdez was denied food stamps due to the tax dependency provision, appellee Valdez filed for a fair hearing contesting the denial of such relief. Although it was found that he was otherwise eligible for the Program, the decision of the hearing officer stated:

> Unfortunately, [Joe Ben Valdez] falls squarely within [the] definition of tax dependent. He is 18 years of age; he was claimed by his father as a tax dependent in 1971; and the father's household is not certified for food stamp assistance. Notwithstanding the fact that he is on public welfare

assistance, he must be found ineligible because he was a tax dependent and this is true even though such finding will defeat the expressed policy of Congress when it passed the Food Stamp Act. [Appendix, at 74]

As a result of this denial of food stamp relief, appellees' infant child became vulnerable to ill health due to the appellees' inability to provide adequate food sustenance.[9]

Appellee Robert A Broderson, 18 years of age, resides in Waterloo, Iowa with his 16 year old wife, Beverly. Appellee Broderson and his wife, at the filing of this law suit, expected a child around July 10, 1972. The household's entire monthly income is $110, all of which is derived from appellee Broderson's job at a service station. (The currently monthly income eligibility criterion in the Food Stamp Program for a three-person household is $307 [37 Fed. Reg. 7724].) Although the Brodersons are poor, they were denied food stamp relief because the appellee was claimed as a "dependent" by his father in the 1971 income tax returns. Appellee Broderson's parents, however, provide him with no support and Colorado law does not permit the appellee to sue his father for support since parents only are obligated to support their children if they are under 16 years of age. [See Appendix A to this Brief; Colorado Rev. Stat. Ann. §43-1-1.] Appellee's household, including the infant child, therefore, is vulnerable to the harmful effects of hunger and undernutrition.[10]

Appellee Kristi Schultz is 19 years of age. She resides with a girlfriend and the latter's two children in Peahi,

[9] All of the relevant facts concerning appellees Joe Ben Valdez and Isabel Valdez can be found in the Appendix, at 50-55, 72-75.

[10] All of the relevant facts concerning appellee Broderson's household can be found in the Appendix, at 56-57.

Maui, Hawaii. Appellee Schultz has no income at all and is totally dependent on her roommate for food and shelter. In August, 1971, appellee Schultz started to receive food stamps. At that time, she received $27.50 in monthly food benefits–she paid 50 cents and received $28 in food stamps. Soon thereafter, however, her food stamp benefits were terminated because appellee's parents declared her as a "dependent" for 1971 income tax purposes, despite the parents' refusal to provide appellee with any support after June, 1971.

Appellee Schultz got married in early 1972. She and her husband, who was unemployed, were unable to get food stamps because of appellee Schultz's dependency status in the previous year. Due to appellee's severe economic circumstances, and due to her inability to obtain food stamp aid, appellee Schultz was forced to live on whatever food she could find growing near her residence. Her diet consisted exclusively of sweet potatoes and water. As a result of this insufficient diet, appellee became seriously malnourished and subsequently was ill for an approximate period of four months. Additionally, the emotional and physical strain resulting from this deprivation was a major cause of her divorce from her husband in May, 1972.

Appellee Schultz is presently without funds. She has received no support from her parents since June, 1971, and she will not be claimed a "dependent" for 1972 income tax purposes. Her sustenance is solely dependent on the charitable nature of her girlfriend, whose family is also poor. (The current monthly income eligibility criterion in Hawaii for the Food Stamp Program is $202 for a one-person household and $480 for a four-person household [37 Fed. Reg. 10012 (May 18, 1972)].) The tax dependency provision, therefore, has provided appel-

lee Schultz with very unfortunate economic and health problems.[11]

Appellee Leonila Nevarez resides with her five children in San Antonio, Texas. Her household has a monthly income of $215 which is obtained through the combined job earnings of appellee's two oldest children. (The current monthly income eligibility criterion in the Food Stamp Program for a six-person household is $507 [37 Fed. Reg. 7724].) By spending only $41 for the household's entire monthly food supply, appellee Nevarez can barely keep her expenses below her household's income. Appellee Nevarez's household, therefore, is in great need of food stamp assistance; previously, the household received $144 a month in food stamps at a cost of $21—a benefit of $123, more than 50 percent of appellee household's total income.

Although appellee Nevarez's estranged husband has provided the household with no support whatever, Mr. Nevarez apparently claimed his children as "dependents" in the previous tax year. Since the Nevarez's oldest son Larry is 18 years of age, appellee's household was denied food stamps because of the tax dependency provision. Mr. Nevarez's whereabouts are unknown, and appellee, therefore, is totally unable to obtain any support from him. Appellee Nevarez, therefore, has been left with the following dilemma: either force Larry out of the household in order to get food stamps (thereby eliminating Larry's earnings from the household's meager income, and causing a rupture of the family's close relationship), or keep Larry in the household (and lose the statutory right to obtain food stamps).[12]

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[11] All of the relevant facts concerning appellee Schultz's household can be found in the Appendix, at 58-59.

[12] All of the relevant facts concerning appellee Nevarez's household can be found in the Appendix, at 60-71.

Appellees instituted a class action in the United States District Court for the District of Columbia to enjoin the enforcement of the tax dependency provisions in the Food Stamp Act [7 U.S.C. §2014(b)] and regulations [7 C.F.R. §§270.2(q) and 271.3(d)]. They argued that these provisions violated the Fifth Amendment to the Constitution of the United States in that they denied appellees due process of law by establishing a conclusive, irrebuttable and erroneous presumption that households, containing a "tax dependent" of the previous year, are not poor and in need of food stamps. Appellees also argued that the provisions denied appellees equal protection of the law. Appellees' motion for a temporary restraining order was argued before District Court Judge Gerhard A. Gesell. The motion was denied.[13] A three-judge District Court was then convened to hear this case, pursuant to 28 U.S.C. §§2282 and 2284. After hearing oral arguments on July 31, 1972, upon cross motions for summary judgment (and an alternative motion to dismiss filed by the appellants), the District Court, in a *per curiam* opinion, ruled that the tax dependency provisions were in violation of the Fifth Amendment, and permanently enjoined further enforcement and implementation of these provisions by the appellants.

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[13] Judge Gesell did not decide this motion until the day following the oral argument. His comments during argument on the motion, however, implied that his decision would be influenced by the amount of time it would take to convene a three-judge court to hear appellees' motion for a preliminary injunction. It appears that his conclusion that such a court could be convened within a reasonable period of time, and that, consequently, denial of the motion for a temporary restraining order would result in a relatively short delay in providing possible relief to the appellees, weighed heavily in his decision to deny the temporary restraining order. [See Appendix B to this Brief, at 10b-12b.]

SUMMARY OF ARGUMENT

The tax dependency provision in the Food Stamp Act and regulations deny food stamp eligibility to households containing persons 18 years of age or older who have been claimed as "dependents" for Federal income tax purposes by taxpayers who are, themselves, ineligible for food stamp relief. Appellees are members of households that have been denied food stamp eligibility solely because their households contain "tax dependents", and therefore, they have standing to challenge the Constitutionality of the tax dependency provisions.

The tax dependency provisions deny essential food relief to "tax dependent" households that are currently needy solely on the basis of the conclusive and erroneous presumption that households, containing a member who has been claimed as a "tax dependent" for the previous tax year, have access to nutritional adequacy. These provisions are arbitrary and capricious and have no reasonable relationship to the purposes of the Food Stamp Act or the achievement of any other permissible governmental purpose. They, therefore, deny appellees their rights to equal protection of the law in violation of the Fifth Amendment to the United States Constitution.

In addition, the tax dependency provisions deny appellees their right to procedural due process. The provisions conclusively, irrebuttably and erroneously presume that appellees' households are not in need of food stamp relief simply because they contain members who were claimed as "tax dependents" for the previous tax year. Appellees are prohibited from proving, through their applications for food stamp eligibility, or through a fair hearing process, that their households are, in fact, needy. The tax dependency provisions, therefore, deny appellees their food stamp entitlements without proce-

dural due process of law, thereby violating the Fifth Amendment to the United States Constitution.

ARGUMENT

I.

ALL OF THE APPELLEES HAVE STANDING TO CHALLENGE THE CONSTITUTIONALITY OF THE FOOD STAMP ACT'S TAX DEPENDENCY PROVISION.

Appellants, in footnote 3 of their brief [see Brief of Appellants, at 5-6], questioned, for the first time in this suit, the standing of appellees to challenge the Constitutionality of the tax dependency provision in the Food Stamp Act. It is clear, however, that all of the appellees, by virtue of their status as members of needy households which were denied food stamp eligibility because of the operation of the tax dependency provision, have standing to bring this suit.

In *Flast v. Cohen*, 392 U.S. 83 (1968), this Court reiterated the traditional test for determining whether parties have standing to sue. The Court, in discussing whether taxpayers had standing to sue to prevent certain expenditures of Federal funds, stated:

> The "gist of the question of standing" is whether the party seeking relief has "alleged such a *personal stake* in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." *Baker v. Carr*, 369 U.S. 186, 204 (1962). In other words, when standing is placed in issue in a case, the question is whether the person whose standing is challenged is a proper party to request an adjudication of a particular issue . . . [392 U.S., at 99-100] (emphasis added)

Similarly, in *Sierra Club v. Morton*, 405 U.S. 727 (1972), this Court stated:

> Whether a party has a *sufficient stake* in an otherwise justifiable controversy is what has traditionally been referred to as the question of standing to sue. Where the party does not rely on any specific statute authorizing invocation of the judicial process, the question of standing depends upon whether the party has alleged such a "personal stake in the outcome of the controversy," *Baker v. Carr*, 369 U.S. 186, 204, as to ensure that "the dispute sought to be adjudicated will be presented in a form historically viewed as capable of judicial resolution." [405 U.S., at 731-732] (emphasis added)

See also *Roe v. Wade*, ___ U.S. ___, 41 U.S.L.W. 4213, 4216 (U.S., Jan. 22, 1973), *Eisenstadt v. Baird*, 405 U.S. 438, 443-446 (1972); *Golden v. Zwickler*, 394 U.S. 104 (1969); *Peoples v. United States Department of Agriculture*, 427 F. 2d 561, 563-564 (D.C. Cir. 1970).

Clearly, appellees in this case have a sufficient personal stake in the issues being litigated in this suit. They are all members of needy households who have been denied eligibility for vital food stamp relief because of the tax dependency provision in the Food Stamp Act. Should this Court find the tax dependency provision unconstitutional, then appellees will be provided the means with which to avoid hunger and malnutrition. Should this Court find no Constitutional violations inherent in the provision, then appellees will be denied an opportunity to purchase a nutritionally adequate diet. [See 7 U.S.C. §§2011, 2013(a), 2014(a) and 2016(a)] It is difficult to conceive of a factual situation in which parties to litigation could have any greater stake in the controversy than that which appellees have in this case. Certainly, if a

physician has standing to raise the Constitutional rights of his patients [*Griswold v. Connecticut*, 381 U.S. 479, 481 (1965)], if a distributor of contraceptives has standing to advocate the Constitutional rights of persons obtaining contraceptives [*Eisenstadt v. Baird*, 405 U.S. 438 (1972)], if a Federal taxpayer has standing to challenge the Constitutionality of certain Federal expenditures [*Flast v. Cohen*, 392 U.S. 83 (1968)], then persons denied the means by which to avoid hunger and malnutrition have standing to challenge the Constitutionality of the statutory provision that resulted in such denials.

Appellants' claim that appellees have no standing to challenge the Constitutionality of the tax dependency provision appears to be grounded on the erroneous belief that none of the appellees should have been denied food stamp eligibility because of that provision. Instead, appellants claim that all of the appellees are victims of improper administrative applications of the tax dependency rule. In this regard, appellants divided the appellees into two groups: (1) those whose households contain members who fraudulently were claimed as "tax dependents", and (2) those whose households contain a "tax dependent" where said "dependent" resided with the taxpayer during the year the dependency was claimed, but not during the year thereafter when the "dependent's" household was denied food stamps. Appellants' claim that the tax dependency provision does not disqualify either of these groups from food stamp eligibility. Appellants' position, however, is unsupported in law or fact.

There is nothing in the tax dependency provision in the Food Stamp Act [7 U.S.C. § 2014(b)] that states or infers that victims of fraudulent dependency claims are

not to be denied eligibility. There is nothing in appellants' tax dependency regulation [7 C.F.R. §271.3(d)], promulgated pursuant to the statute, that allows or infers any such exception. Nor do appellants' own Instructions, which explain and clarify their regulations to the State agencies, provide for any exception in the application of the tax dependency rule when persons are victims of fraudulent tax dependency claims [FNS Instruction 732-1, §III-F].

In addition, appellants—in the District Court—verified that there is no exception to the tax dependency rule in cases of invalid dependency claims. In his affidavit, to the District Court, Edward J. Hekman, Administrator of the Food and Nutrition Service of the United States Department of Agriculture, simply stated that the tax dependency regulation [7 C.F.R. §271.3(d)] had to be promulgated in the form in which it was issued on July 29, 1971, "in order to carry out the intent of the legislation" [Appendix, at 76-77]. Howard P. Davis, Acting Administrator of the Food and Nutrition Service, in his affidavit to the District Court, also failed to refer to any exception to the tax dependency rule. In fact, Acting Administrator Davis was careful to point out that in a fair hearing, in which an applicant challenges a denial of eligibility based on the tax dependency rule, "*there are no factual issues to be presented or challenged . . . other than the issue of whether or not a member of the household has been claimed as a dependent child,* by a taxpayer who is not a member of a household eligible for food assistance (a fact the household, in most cases, already will have disclosed in its application)." [Appendix, at 83] (emphasis added)

Finally, during oral argument in the District Court, appellants acknowledged that the invalidity of a tax dependency claim does not, under the statute, bar the

application of the tax dependency rule [Appendix B to the Brief, at 22b-24b]. Indeed, appellants conceded that they do not even look into a taxpayer's tax returns to determine whether the tax dependency claim was validly made [Appendix B to this Brief, at 22b].

It is clear, therefore, that appellants' contention—that victims of invalid tax dependency claims have no standing in this case because the provision does not deny them eligibility—is groundless. The Food Stamp Act, the regulations, the instructions, affidavits of Agriculture Department administrators, and statements of appellants' counsel all demonstrate that appellants' position has no validity in law or in reality. Similarly important, appellants are incorrect in their very assumption that all of the appellees, except appellees Valdez, Broderson and Schultz, are victims of invalid tax dependency claims. No such contention can be supported in the cases of appellees Murry and Alderete.

Appellee Murry had been receiving $15 every two weeks plus payment of rent ($25 per month) from her ex-husband as court-ordered child support for her two sons. Since the Murry household has no other income, these child support payments were the sole support of Mrs. Murry's two sons. Consequently, appellee's ex-husband *legitimately* claimed his 19-year old son as a "tax-dependent" even though the child was actually receiving only the equivalent of $11.50 monthly.

Appellee Alderete's 18-year old son also is receiving over half of his support from his father. Since $105 of the family's $205 monthly income came from child support payments, it is obvious that the child's father properly took his son as a "tax dependent". Even though the family's income and the child support payments are dreadfully low, the tax dependency claim was properly

made since the "dependent" received over half of his income from his father.

In short, appellees Murry and Alderete are not victims of fraudulent tax dependency claims and they have standing to challenge the provision in question: they were denied vital food stamp relief solely because of the statutory tax dependency provision. By assuming that these two appellees were victims of illegal dependency claims, however, appellants merely substantiate the invidious harshness and irrationality of the provision itself. The provision is not reasonably related to the purposes of the Food Stamp Program particularly insofar as it has absolutely no bearing on a household's need for food stamp relief.

Appellants' contention that appellees Valdez, Broderson and Schultz have no standing to litigate this case—since they were living with the taxpayer (who made the dependency claim) during the year for which they were claimed as "dependents", and, therefore, should not have been subject to the tax dependency rule—is incorrect for two reasons. First, appellees Joe Ben Valdez and Kristi Schultz lived in the taxpayers' households for only *part of the taxable year* for which they were claimed; *during most of that tax year*, they resided in their current households. Therefore, even under the appellants' interpretation of the tax dependency provision, appellees Valdez and Schultz have been denied food stamps in accordance with the unconstitutional dictates of the tax dependency provision.

Second, there are absolutely no legal or factual grounds upon which appellants can substantiate their contention that "tax dependents", living in the taxpayer's households *during the entire year* for which they were claimed—but not during the year thereafter—are not

subject to the tax dependency rule. Nothing in the tax dependency provision of the Food Stamp Act [7 U.S.C. §2014(b)] provides or infers such an interpretation. Appellants' own regulation [7 C.F.R. §271.3(d)] fails to provide or infer this kind of exception. Appellants' Instruction [FNS Instr. 732-1, §III-F] does not explain or clarify the tax dependency rule to allow for appellants' newly-created interpretation. Appellants' affidavits in the District Court [Appendix, at 76,80] also fail to allow for such an interpretation of the tax dependency rule and, therefore, the state agencies (administering the Program) are not aware of appellants' new interpretation of the rule. If they were, appellee Broderson would not have been denied food stamp eligibility. Clearly, appellants' position—that the tax dependency provision is not applicable to a person who lives in the taxpayer's home during the entire year the dependency claim was made, but not during the year thereafter—is erroneous and is belied by their own statutory interpretation prior to this appeal.

In sum, all of the appellees have been denied food stamp eligibility because of the tax dependency provision in the Food Stamp Act. They have a vital stake in this Court's determination of the tax dependency provision's Constitutionality because an affirmation of the District Court's decision is the only way appellees can obtain food stamp relief. Appellants would deny appellees the opportunity to challenge and settle this issue by interpreting the tax dependency provision in ways that they claim would not have disqualified appellees. Appellants, however, ignore the fact that their new interpretation of the statute is contrary to the provision's plain language as well as their own regulations, instructions, affidavits, oral argument in District Court, and the actual application of the rule by state agencies

pursuant to appellants' dictates. Moreover, even under appellants' erroneous new interpretations of the statute, appellees Murry, Alderete, Valdez and Schultz have standing to challenge the Constitutionality of the provision. Consequently, the appellees herein have a sufficient personal stake in this adjudication to assure that they have the Constitutional requisites for standing.

II.

THE DISCRIMINATORY TAX DEPENDENCY PROVISION, WHICH DENIES AID TO AN ENTIRE HOUSEHOLD IF ONE MEMBER THEREOF WAS CLAIMED AS A "TAX DEPENDENT" FOR THE PREVIOUS YEAR, VIOLATES EQUAL PROTECTION INSOFAR AS IT IS ARBITRARY AND IRRATIONAL AND HAS NO REASONABLE RELATIONSHIP TO ANY LEGITIMATE GOVERNMENTAL INTEREST.

The tax dependency provisions in the Food Stamp Act [7 U.S.C. §2014(b)] and regulations [7 C.F.R. §§270.2(q) and 271.3(d)] create two classes of persons for purposes of Food Stamp Program eligibility: *one class* composed of persons financially in need of food stamp relief who reside in households which do not contain persons written off as "tax dependents" *for the previous year*; and *another class* composed of persons similarly in need of food stamp aid but who reside in households which include a person who was declared a "tax dependent" *for the past year* by a parent who lives in another household which is ineligible for food stamps. As a result of this singular exception, poor people in the latter class are entirely excluded from food stamp relief while members of the former class are entitled to such assistance. This discriminatory denial of crucial food

aid—which is based on the conclusive, irrebuttable and erroneous presumption that households containing a previous year's "tax dependent" are unneedy and have access to nutritional adequacy—is arbitrary and not reasonably related to the Food Stamp Act, and is therefore violative of equal protection.

It is well settled that the Constitutional dictates of equal protection are applicable to the Federal defendant-appellants herein through the Due Process Clause of the Fifth Amendment. [*Bolling v. Sharpe*, 347 U.S. 497, 499 (1954); *Schneider v. Rusk*, 377 U.S. 163, 168 (1964); *Davis v. Richardson*, 342 F. Supp. 588 (D. Conn. 1972), *aff'd*,_____ U.S.___, 41 U.S.L.W. 3345 (U.S., Dec. 18, 1972); *Griffin v. Richardson*, 346 F. Supp. 1226, 1232 (D. Md. 1972), *aff'd*,_____U.S._____, 41 U.S.L.W. 3345 (U.S., Dec. 18, 1972); *United States v. Jones*, 384 F.2d 781, 782 (7th Cir. 1967)] Federal officials are not permitted to arbitrarily discriminate against persons in the administration of government benefit programs. [*Shapiro v. Thompson*, 394 U.S. 618, 641-642 (1969); *Davis v. Richardson, supra; Griffin v. Richardson, supra*]

The Traditional principle underlying the application of the equal protection clause was articulated by this Court in *Gulf, Colorado and Santa Fe Ry. v. Ellis*, 165 U.S. 150 (1897). The Court said that a classification

> must always rest upon some difference *which bears a reasonable and just relation to the act in respect to which the classification is proposed* and can never be made arbitrarily and without any such basis. [165 U.S., at 155] (emphasis added)

In a somewhat more recent statement of that principle, the Court, in *Royster Guano Co. v. Virginia*, 253 U.S. 412, 415 (1920), said that a "classification must be reasonable, not arbitrary, and *must rest upon some*

ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." (emphasis added) [See *Reed v. Reed,* 404 U.S. 71, 76 (1971)] And last term, the Court reiterated that "in all equal protection cases . . . the crucial question is *whether there is an appropriate governmental interest suitably furthered by the differential treatment.*[14] [*Police Department of Chicago v. Mosley,* 408 U.S. 92, 95 (1972)] (emphasis added)

Therefore, although the purpose behind the tax dependency provision–i.e., the prevention of the non-needy households from receiving Food Stamp Program relief–is most praiseworthy, the provision must "suitably further" that purpose and must have "a fair and substantial relation to the object of the legislation."[15]

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[14] Although the *Mosley* case, because of its First Amendment overtones, was eventually decided on the strict scrutiny test –wherein the defendant-appellants had to demonstrate that the discrimination promoted a compelling governmental interest [408 U.S., at 98-102]–the test enunciated in the text stated the traditional, less cumbersome equal protection formulation. [See, also, *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164, 172-173 (1972); *James v. Strange,* 407 U.S. 128, 140-141 (1972); *Eisenstadt v. Baird,* 405 U.S. 438, 446-447 (1972); *Rinaldi v. Yeager,* 384 U.S. 305, 308-309 (1966); *Morey v. Doud,* 354 U.S. 457, 465 (1957).]

[15] Appellees completely support legitimate efforts that seek to eliminate non-needy households from participating in the Food Stamp Program. Poor people, like the appellees and their class, are interested in preventing the affluent from participating in the Program because the size of indigents' benefits are likely to diminish if many rich people wrongfully participate. Moreover, abuses in the Program frequently lead to irrational provisions–like the one here at issue as well as the unrelated household provision [7 U.S.C. §2012(e)]–which invidiously harm the poor and hungry, the very persons whom the Food Stamp Program was designed to help. [7 U.S.C. §2011] With regard to the provision

This nexus between the permissible governmental objective and the discriminatory governmental treatment should not be lightly inferred. [See Gunther, "The Supreme Court 1971 Term Foreword: In Search of Evolving Doctrine on a Changing Court: A Model For a Newer Equal Protection," 86 Harv. L. Rev. 1, 20-24, 26-30 (1972)] As Justice Jackson stated, and as the Court approvingly cited in *Eisenstadt v. Baird, supra,* 405 U.S., at 454:

> Invocation of the equal protection clause . . . does not disable any governmental body from dealing with the subject at hand. It merely means that the prohibition or regulation must have a broader impact. I regard it as a salutary doctrine that *cities, states and the Federal Government must exercise their powers so as not to discriminate between their inhabitants except upon some reasonable differentiation fairly related to the object of regulation.* This equality is not merely abstract justice. The framers of the Constitution knew, and we should not forget today, that there is no more effective practical guaranty against arbitrary and unreasonable government than to require that the principles of law which officials would impose upon a minority must be imposed generally. Conversely, nothing opens the door to arbitrary action so effectively as to allow those officials to pick and choose only a few to to whom they will apply legislation and thus to escape the political retribution that might be visited upon them if larger numbers were affected. Courts can take no better measure to assure that laws will be just than to

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here at issue, therefore, "[w]e do not question the importance of [the] interest [sought to be promoted]; what we do question is how the challenged statute will promote it." [*Weber v. Aetna Casualty & Surety Co., supra,* 406 U.S., at 173]

require that laws be equal in operation. [*Railway Express Agency v. New York*, 336 U.S. 106, 112-113 (1949) (Jackson, J., concurring)] (emphasis added)

As appellees will demonstrate, the tax dependency provision does not have such a fair and reasonable relationship to the object of the legislation and, with reference to the purposes of the Food Stamp Act [7 U.S.C. §2011], the provision is wholly arbitrary and capricious.

A. The Tax Dependency Provision Is Arbitrary and Capricious In That It Conclusively, Irrebuttably and Erroneously Concludes That a Household Containing a "Tax Dependent" of the Previous Year Is Not Needy.

Congressional purposes pursuant to the tax dependency provision have been set forth concisely by the appellants: Congress sought to eliminate non-needy households from participating in the Food Stamp Program [see appellants' Brief, at 9-10 (text and n. 5)]; Congress viewed the provision "as a question of defining those people who are needy."[16] [Appendix B to the Brief, at 5b] Appellants sought to rationalize the discriminatory treatment pursuant to the tax dependency provision by indicating that—for Food Stamp Program purposes—it is permissible to classify people on the basis of "whether or not they are needy." [*Ibid.*, at 6b] Indeed, similar to the House Agriculture Committee which had formulated the provision [House Report No.

[16] Since the provision was designed to determine which households are neither poor nor in need of food assistance, the tax dependency provision was incorporated in the income and resource subsection of the eligibility section. [7 U.S.C. §2014(b)]

91-1402, 91st Cong., 2d Sess. (1970), at 8], appellants likened the provision to the income need eligibility standards. [Appendix B to Brief, at 6b-7b]

Under the provision, a household is rigidly deemed to be unneedy if a member therein, during the past year, was written off as a "tax dependent" by a parent in another household which is ineligible for food stamp aid. Even if the "tax dependent's" household is poor, hungry and malnourished, it conclusively is deemed to have sufficient resources for obtaining a nutritionally adequate diet. No matter what the circumstances, once it is established that a household contains a "tax dependent" of the previous year, that household may not receive any Federal food relief.

That this provision is arbitrary and capricious with regard to the Food Stamp Program's purposes is readily apparent from the Act's Declaration of Policy:

> It is hereby declared to be the policy of Congress, in order to promote the general welfare, that the Nation's abundance of food should be utilized cooperatively by the States, the Federal Government, local governmental units, and other agencies to safeguard the health and well-being of the Nation's population and raise levels of nutrition among low-income households. The Congress hereby finds that the limited food purchasing power of low-income households contributes to hunger and malnutrition among members of such households . . . To alleviate such hunger and malnutrition, a food stamp program is herein authorized which will permit low-income households to purchase a nutritionally adequate diet through normal channels of trade. [7 U.S.C. §2011; see, also, 7 U.S.C. §2014(a)]

Although Congress sought to provide adequate nutrition to all needy households, the tax dependency provision arbitrarily frustrates that goal. Even though the provision has absolutely no relationship to the determination of present need, and even though the provision is, at best, only tenuously related to the assessment of past need, it conclusively and irrebuttably presumes that households, containing a "tax dependent" of the previous year, presently are not poor. At no point in the administrative process—either during the initial application stage or at any subsequent hearing—may "tax dependent" households adduce any evidence about their true needy status. [See affidavit of appellant Food and Nutrition Service Acting Administrator Howard P. Davis, Appendix, at 83] As a result, the rigid and inflexible provision arbitrarily eliminates many thousands of needy households from food stamp relief, leaving them hungry and malnourished in complete frustration of the Program's important purposes. [7 U.S.C. §2011]

Certainly the denial of crucial food stamp aid—based solely on the irrebuttable presumption that households, containing a "tax dependent" of the previous year, are not needy—is arbitrary when such households have no right to demonstrate that the dependency claims were fraudulent. Such denials of aid are also arbitrary and capricious when needy households are precluded from demonstrating that the support they receive is wholly insufficient "to purchase a nutritionally adequate diet" [7 U.S.C. §2014(a); see, also, 7 U.S.C. §§2011, 2013(a) and 2016(a)]. Moreover, it is entirely arbitrary to conclusively presume that such households are not needy even when they can convincingly demonstrate that: the taxpayer presently is unable or unwilling to contribute to the "dependent" even though contributions were made in the previous year; or the taxpayer indicated to the Internal Revenue Service and the Food Stamp Office that

he will not file a dependency claim this year; or the members of the "dependent's" household receive absolutely or virtually no benefit from the contributions by the taxpayer (either because the contributions are made solely to and for the "dependent" or because the contributions to the "dependent" are so small that they cannot be apportioned to other household members). Yet, the tax dependency provision sweeps broadly and inflexibly, unwittingly denying assistance to the rich and poor alike.

1. *Households Containing a "Tax Dependent" of the Previous Year May Not Demonstrate That the Dependency Claim Was Taken Fraudulently.*

Since the provision at issue denies aid exclusively on the basis of a dependency claim, it would be only reasonable to permit a harmfully affected, impoverished household to demonstrate that the dependency claim was fraudulently taken. Contrary to the appellants' newly-created interpretation of the statute [see appellants' Brief, at 12 (both text and n. 6)], however, the provision is not so reasonable. In language, and in its implementation, the provision automatically disqualifies a household from Federal food aid if it contains a person written off as a "tax dependent" in the previous year. As Acting Food and Nutrition Service Administrator Howard P. Davis indicated:

> [I]n the case of households which have initially been determined to be ineligible for participation in the program on the basis of tax dependency, *there are no factual issues to be presented or challenged by the household at . . . a hearing, other than the issue of whether or not a member of the household*

has been claimed as a dependent child by a taxpayer who is not a member of a household eligible for food assistance (a fact the household, in most cases, already will have disclosed in its application). *If a household states that it has such a tax dependent member, the household is, in conformity with the Food Stamp Act, the program regulations, and the instruction of FNS governing the program administration by State agencies, determined to be ineligible.* [Appendix, at 83] (emphasis added)

Based both on language and previous interpretation, therefore, the statute [7 U.S.C. §2014(b)], pertinent regulations (7 C.F.R. §§270.2(q) and 271.3(d)], and appellants' Instructions [FNS Instr. 732-1, §III-F] clearly prevent households from challenging the legitimacy of the tax dependency claim. Indeed, the uniform state-by-state implementation of the provision verifies that households cannot challenge fraudulent dependency claims which serve to preclude them from obtaining much-needed food relief.

More specifically on point, however, is the colloquy in the District Court wherein the appellants admitted that the statutory provision cannot be implemented so as to scrutinize the legitimacy of the tax dependency claim:

JUDGE GESELL: In administering the statute, you don't even look at the tax returns, do you?

MR. BRICKFIELD: No, sir.

JUDGE GESELL: So all that talk about the tax returns is a little off the mark, isn't it? You don't examine them to determine whether or not the dependency claim is validly made, whether the dependency claim is actually made, or anything else. You ask some of these poor people who come in and say, I think so; so they get no food stamps. They say, I think he did last year, or, I don't know. There isn't any

administration through the Internal Revenue Bureau of this system that makes it fair throughout the country. If the women, when she goes in, says, No he didn't, then she gets the food stamps.

MR. BRICKFIELD: Yes, sir.

JUDGE GESELL: So there isn't any use of the tax information to implement the program, in fact, is there?

MR. BRICKFIELD: No, sir. The use of the tax information it is believed by the Internal Revenue Service, for this purpose, would be illegal and contrary to their statutes, which provide a non-disclosure of tax returns.

JUDGE GESELL: Doesn't that suggest the further arbitrariness, then, in the standard that the Congress used?

MR. BRICKFIELD: I think not, sir. The question is, claimed, as opposed to any other situation, when a person is claimed; and you are entitled to a hearing on the fact of whether they are or are not claimed. That hearing you get. You are entitled to a hearing on whether the parent taxpayer is or is not of an income that would make him eligible for food stamps. These hearings you get. But once that parent claims the child for income tax purposes, he receives that benefit and, therefore, the duality of benefit.

JUDGE GESELL: He is no where around.

MR. BRICKFIELD: He is given some money.

JUDGE GESELL: He is gone; he is long gone; he is not before the hearing. Nobody knows where he is or who he is or who is shacked up with or what he is doing. Isn't that right? The person that is in the hearing is the lady that is home with a bunch of young kids, as I understand this case.

MR. BRICKFIELD: Yes, sir.

JUDGE GESELL: Not the man who claimed the dependency. He is gone. Is that right?

MR. BRICKFIELD: That is under the situation—

JUDGE GESELL: What do you mean about this hearing? He is not there.

MR. BRICKFIELD: Under the situation, as we have it by these few Plaintiffs, the man is not there. This woman comes in. If she says she was not claimed, her word is taken. If she says she was claimed and she says she knows, then that word is taken.

JUDGE GESELL: Then the statute operates.

MR. BRICKFIELD: Then the statute operates . . . . [See Appendix B to this Brief, at 22b-23b]

For appellees Lee, Nevarez and Beavert, Judge Gesell's hypothetical is a stark reality. Mrs. Lee has had to take care of herself and her five youngsters on a monthly income of only $23. Even though the current monthly income eligibility criterion for a six-person household is $507 [37 Fed. Reg. 7724], she is conclusively deemed unneedy and ineligible for food stamp relief since her husband—whose whereabouts are unknown and who provides no support to his wife and children—claimed the two oldest children as "tax dependents." [Appendix, at 32-33] Mrs. Nevarez's six-person household must subsist on only $215, but is irrebuttably deemed not poor (and, therefore, denied food stamp aid) because her husband—whose whereabouts are also unknown and who makes no contribution to Mrs. Nevarez's household—apparently fraudulently claimed his oldest son as a "tax dependent". [Appendix at 60-62] And appellee Beavert, who is poor and whose husband wrongfully claimed their oldest daughter Crystal as a "dependent", is denied food stamp aid for herself and her children on the erroneous but

conclusive presumption that her household is unneedy. [Appendix, at 48-49]

Due exclusively to the sins of another, therefore, appellees and their households are completely precluded from the food sustenance they could have obtained through the Food Stamp Program. For the one year following the improper tax dependency claim, the appellees–regardless how poor, hungry or malnourished they may be–are denied vital food stamp aid even though they can convincingly demonstrate that the dependency claim was fraudulent. Since, under the statute, they cannot challenge the propriety of the tax dependency claim, and since the claim was uncontrollably and wrongfully made by another, it is obvious that the provision here at issue is both arbitrary and irrational. [See *Levy v. Louisiana*, 391 U.S. 68, 72 (1968); *Weber v. Aetna Casualty & Surety Co., supra*, 406 U.S., at 175-176.]

2. *Households containing a "tax dependent" of the previous year may not demonstrate that they have been receiving insufficient support from the taxpayer.*

In order to claim someone as a "dependent" for Federal income tax purposes, it is not necessary to provide that person with any minimum contribution. Under the Internal Revenue Code, an individual may be claimed as a "dependent" even if the claimant provided the "dependent" with only one dollar ($1) in annual support. [26 U.S.C. §§152(a)] This is because the Code merely defines a "dependent" as an individual "over half of whose support, for the calendar year in which the taxable year of the taxapyer begins, was received from

the taxpayer . . . " [*Id.*] Consequently, even when a legal and non-fraudulent dependency claim is made, the support provided to the "dependent" may be wholly insufficient "to purchase a nutritionally adequate diet." [7 U.S.C. §2014(a); see, also, 7 U.S.C. §§2011, 2013(a) and 2016(a)]

Even though a "dependent" may be poor, hungry and malnourished, the tax dependency provision does not permit said "dependent" to demonstrate his indigency status. At no time in the administrative process may the poverty-stricken "dependent" adduce any evidence of his inability to obtain adequate nutrition. In complete frustration of the Food Stamp Program's purpose [7 U.S.C. §2011], therefore, the tax dependency provision rigidly and inflexibly denies food relief solely because the indigent was claimed as a "dependent" for the previous year. As the District Court and appellants indicated:

> THE COURT: If there are ten people in the household and the father that is long gone gives the oldest son $10, and there is no other income in the family, all the other nine people get excluded from stamps?
>
> MR. BRICKFIELD: That is so. This was considered—[Appendix B to this Brief, at 5b]

Consequently, even if a child received a small cash gift on Christmas from his father, and that was the only money received by the child's household that year, then the child properly could be written off as a "tax dependent" and his household would be ineligible for food relief during the following year. [*Id.* at 20b]

The irrationality of this situation is best exemplified by appellees Murry and Alderete. Appellee Lula Mae Murry's five-person household subsists exclusively on $57.50 monthly support payments provided from her ex-husband, Lazrous Murry (who, because he supports his

second wife and their two children on a laborer's salary, cannot provide any additional support to appellee Murry's household). Appellee's entire household was denied food stamp aid because Mrs. Murry's oldest son, Jordan, is over 18 years of age and was claimed as a "dependent" in Lazrous Murry's tax return. [Appendix, at 29-31] Therefore, as a result of the $57.50 monthly support payment received by appellee's household—or, more precisely, as a result of the proportionate monthly share received by Jordan ($11.50)—the entire household was denied $132 in crucial monthly Federal food aid. [37 Fed. Reg. 7724]

Similarly, appellee Victoria Alderete's six-person household—which has a monthly income of $205, $105 of which is provided from Mrs. Alderete's ex-husband (Juan)—was denied food stamp relief because appellee's 18 year old son (George) was declared as a "tax dependent" by her ex-husband. [Appendix, at 34-36] Consequently, as a result of the $105 monthly payments to appellee's household—or, more on point, due to the $17.50 in proportionate monthly support received by George—the Alderete household lost $152 in monthly food stamp allotments. [37 Fed. Reg. 7724]

The irrationality of the provision, therefore, is obvious. Poverty-stricken households are denied health-essential food benefits solely because of a tax dependency claim filed by a parent who can provide only a small fraction of the "dependent's" economic and nutritional needs. Indeed, after the support received by appellees' households are added to all their other income, they fall far short of the income poverty standard established by the appellants for Food Stamp Program eligibility:

Appellee	Appellee's Household Size	Appellee's Monthly Income	Monthly Food Stamp Eligibility Standard
Murry	5	$ 57.50	$440
Lee	6	23	507
Alderete	6	205	507
Beavert	3	224	307
Valdez	3	224	307
Broderson	3	110	307
Schultz	1	0	202[17]
Nevarez	6	215	507

[37 Fed. Reg. 7724]

Despite the fact that the appellees, and thousands of persons similarly situated, are deemed nutritionally-indigent, the tax dependency provision rigidly and entirely precludes them from obtaining necessary food relief. Certainly with regard to the purposes of the Food Stamp Program [7 U.S.C. §2011], the provision is wholly arbitrary, irrational and capricious.

3. *Households containing a "tax dependent" of the previous year may not demonstrate that they receive no current support from the taxpayer.*

In actual operation, the tax dependency provision only excludes indigents from Program participation *during the year after the tax period for which the dependency claim was made.*[18] [See *supra*, at 6] Consequently, it would

[17] The one-person eligibility standard for appellee Schultz is based on the income eligibility criteria for the State of Hawaii. [37 Fed. Reg. 10012]

[18] Appellants have dramatized the absurdity of the provision's operation, in this respect, in their own Instructions. [FNS Instr. 732-1, §III-R] The Instructions state:

be only reasonable to permit affected households to demonstrate the current status of their relationship with the taxpayer. Since poor people's lives undergo frequent changes, it would be wholly arbitrary to *conclusively* presume that a poor person's economic and dependency circumstances remained the same from one year to the next. Yet, in language and in operation, this is precisely what the tax dependency provision does.

Even when a household, containing a previous year's "tax dependent", can convincingly demonstrate that it currently receives no support from the taxpayer, such proof is wholly irrelevant to the operation of the tax dependency provision. Even when the household can prove that it no longer knows the whereabouts of the taxpayer, the household is denied food stamp relief. And even when such a household can produce the taxpayer's sworn affidavit attesting that he will not make a dependency claim for the current year, the household is denied access to Federal nutrition assistance. In short, the tax dependency provision inflexibility denies necessary

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A person will be considered a tax dependent for the period claimed and for a period of one year after expiration of such tax period. For example, if a person is claimed as a dependent in March of 1972 for the 1971 tax year, *he will be ineligible until January 1973* . . . [Appendix, at 81] (emphasis added)

In actual operation, the tax dependency claim for the 1971 tax year does not affect the "dependent" household's eligibility during that year; this is because the dependency claim is made in March, 1972, and the tax year already is completed when the claim is made. The "dependent" household's ineligibility actually occurs solely from March 1972 to December 31, 1972 (during the year subsequent to the tax period)—a period which is wholly irrelevant to the tax claim, during which economic and dependency circumstances are likely to have changed.

food aid until 12 months after the expiration of the tax period—regardless of changes in the dependency relationship which spawned the denial of food stamp relief.

For appellees Valdez, Broderson and Schultz, this arbitrary aspect of the tax dependency provision has had a most harmful effect. Appellee Joe Ben Valdez, as an example, was legitimately claimed as a "tax dependent" for 1971 by his father, Ben G. Valdez. For tax year 1972, however, Ben G. Valdez was totally unable to provide his son with any support. Although his income was above the Federal guidelines for food stamp relief—insofar as his income was $450, merely $10 more than the income eligibility criterion for a five-member household [37 Fed. Reg. 7724]—Ben G. Valdez's debts (totaling $5250) and expenditures substantially exceeded his household's income; moreover, his diabetic and ulcer condition burdened his ability to keep his household solvent. Throughout 1972, therefore, appellee Valdez and his father could conclusively prove that no support would be provided in, and no dependency claim would be taken for, tax year 1972. Nevertheless, when appellee Valdez challenged his household's ineligibility for food stamp assistance in 1972, the hearing officer was forced to conclude:

> Unfortunately, the appellant falls squarely within this definition of tax dependent. He is 18 years of age; he was claimed by his father as a tax dependent in 1971; and the father's household is not certified for food stamp assistance. Notwithstanding the fact that he is on public welfare assistance, he must be found ineligible because he was a tax dependent and this is true even though such finding will defeat the expressed policy of Congress when it passed the Food Stamp Act. [Appendix, at 74]

Consequently, appellee Valdez, his wife and one month old baby were left without sufficient resources for adequate food sustenance. [Appendix, at 50-52]

Appellee Kristi Schultz validly was claimed as a "tax dependent" for 1971, even though her parents refused to provide her with any support after June, 1971. Although she continuously could demonstrate that she received no support whatever from June, 1971 throughout 1972, she was denied food stamps in 1972 because she was claimed as a "dependent" for the previous year. As a result, appellee Schultz was completely penniless and was forced to subsist exclusively on wild sweet potatoes and water, thereby making her severely malnourished and ill for a four month period. [Appendix, at 58-59] Appellee Robert Broderson similarly was denied food stamp relief in 1972 for himself, his wife, and their newly-born child. Although his employment provided the household with merely $110 in monthly income, and although he received no support from his parents in 1972, the important food stamp aid he sought for his family was withheld because he was claimed as a "tax dependent" in 1971. [Appendix, at 56-57]

Appellants' only rationalization for the inflexible one year carry-over—after the tax year for which the dependency claim was made—further serves to demonstrate how arbitrary the tax dependency provision is. Appellants would erroneously have this Court believe that the one year carry-over is "the only practical means" by which to determine whether a tax dependency claim will be taken for that carry-over year. [Appellants' Brief, at 13, n. 7] Their assertion, however, flies in the face of reality and merely underscores the entire irrationality of the tax dependency provision.

Since "most people . . . file their income tax in April or some time in the beginning of the year for the previous tax year" [Appendix B to this Brief, at 17b], at the end of the carry-over year (December 31) it is impossible to determine whether a dependency claim will actually be taken for that carry-over year. Consequently, the one year carry-over ineligibility period does not in any way aid in determining whether there will be a continuation of the tax dependency status. The following hypothetical is illustrative:

> Taxpayer-parent B files his income tax claims every April. In April, 1972, taxpayer-parent B claimed child A as a "tax dependent" for 1971. Consequently, child A became ineligible during the carry-over year (ending on December 31, 1972). By the end of the carry-over year, however, no tax returns had been filed for tax year 1972 since those returns will be filed in April 1973.

Obviously, the one year carry-over has no utility whatever in determining whether a tax dependency claim actually will be taken for the carry-over year. Indeed, the carry-over provision serves no purpose at all, other than to arbitrarily and inflexibility eliminate scores of poor people from the food stamp rolls.[19] Since the tax

[19] In *Shapiro v. Thompson* 394 U.S. 618 (1969), the Court—"even under [the] traditional equal protection tests" [394 U.S., at 638]—held that the one year waiting period for new residents was a Constitutionally impermissible denial of welfare assistance. Although the one year durational residence requirement did serve to deter "fraudulent receipt of welfare benefits" [394 U.S., at 637], the Court deemed it "unreasonable to accomplish this objective by the blunderbuss method of denying assistance to all indigent newcomers for an entire year." [*Id.*] By contrast, plaintiff-appellees' position in this case is even stronger: the one year carry-over serves absolutely no purpose at all. Although the tax dependency provision's one year carry-over also utilizes the "blunderbuss method" of eliminating all former "tax dependent"

dependency provision is an entire nullity during the tax year for which the dependency claim was made [see *supra*, at 6], and since the provision arbitrarily, rigidly and for no purpose whatever denies aid during the succeeding carry-over year, the provision is in clear violation of the Constitution's equal protection requirements.

4. *All household members, in a household containing a "tax dependent", are denied food stamp aid even though they are prohibited from demonstrating that the support provided to the "dependent" is of little or no benefit to them.*

All members of a household containing a previous year's "tax dependent" are excluded from the Food Stamp Program. Even when such household members can convincingly demonstrate that they received absolutely or virtually no benefit from the contributions by the

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indigents for one year, no countervailing governmental objective colorably is advanced by the carry-over ineligibility period. Moreover, as in *Shapiro*, "less drastic means are available" [*Id.*] to fullfill Congressional objectives under the tax dependency provision. A hearing can be held to determine whether a household, containing a former "tax dependent", presently has access to nutritional adequacy, or whether such household is currently being supported by the taxpayer. [See 7 C.F.R. §271.1(o)] Moreover, since the applicant household's word is taken at face value—when a member thereof indicates that he was written off as a "dependent" for the previous tax year [see Appendix B, at 22b-23b]—there is no reason why the household's word cannot be accepted about its likely current dependency status or, in fact, whether it has actual access to sufficient resources to obtain a nutritionally adequate diet. As with all other eligibility factors, an applicant's information can be subjected to verification and investigation procedures. [See 7 C.F.R. §§271.4(a)(2)(ii) and (iii)] Consequently, the one year ineligibility carry-over is unreasonable and violates appellees' rights to equal protection.

taxpayer—either because the contributions are made solely to and for the benefit of the "dependent", or because the contributions to the "dependent" are so small that they cannot be apportioned to other household members—they are entirely ineligible for Federal food relief. During the three-judge District Court argument, the appellants verified this inequity:

> JUDGE ROBB: . . . [Y]ou say this statute was intended to furnish food to low income families, correct?
>
> MR. BRICKFIELD: Yes, correct.
>
> JUDGE ROBB: Yet, you say, although you have a family, we will say, with eight or ten people in it, if one of those people happened to be taken as a tax deduction, the family is, ipso facto, not a low income family, right?
>
> MR. BRICKFIELD: No, sir. They are not an eligible family. They may still be a low income family . . . [Appendix B to this Brief, at 19b]

Regardless of the relationship between the "tax dependent" and other household members; regardless of the relationship between the taxpayer and the "non-dependent" members of the "dependent's" household; regardless whether the "tax dependent" has an obligation, or voluntarily decides, to support other household members; and regardless of the "dependent's" ability to sufficiently apportion support payments to other household members, everyone in the "dependent's" household is blindly and automatically denied food stamp aid. Particularly since the status of these variable conditions can be easily determined, and since those conditions are of utmost importance to household members' economic and nutritional circumstances, it is irrational and arbitrary to sweepingly deny Federal food sustenance in such

an indiscriminate manner. Consequently, the tax dependency provision violates indigents' rights to equal protection.

B. The Tax Dependency Provision Is Not Reasonably Related to Any Legitimate Governmental Purpose.

Although the tax dependency provision seeks to exclude currently non-needy households from Food Stamp Program participation [Appellants' Brief, at 9-10], the provision is unreasonably related to that objective. In the guise of eliminating the rich from Program participation, the tax dependency provision rigidly and arbitrarily eliminates thousands of poor people, including the appellees, from health-vital food aid. As District Judge Hart aptly phrased it during the argument before the three-judge District Court:

> Counsel, don't we really get down to this in this case: That Congress recognized a small evil. In an effort to excise that evil, instead of using a scalpel, it used a meat cleaver, and it just cut much too broad and deep throughout the needy people. Really, someting it didn't intend to do. Certainly Congress never intended to cut out people like these Plaintiffs in this case.[20] [Appendix B to this Brief, at 18b]

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[20] At the end of the hearing, District Judge Hart expressed the same idea somewhat less delicately. After inquiring from the Government's counsel as to whether he served in the military, and after said counsel responded in the negative, Judge Hart stated: "Well, you won't understand this, but you have told us what Congress aimed at. Whoever was marking the target was surely waving Maggie's drawers—meaning, a complete miss." [Appendix B to this Brief, at 26b]

Insofar as Food Stamp Program eligibility operates exclusively on the basis of *current circumstances*[21] the

[21] That household participation in the Program is based on *current circumstances* is obvious. Certification periods in the Program are designed so that the most recent information is used to determine accurately a household's continued eligibility and proper benefit levels. The regulations require that:

> The State agency shall provide for periodic recertifications of participating households to determine changes in status which would affect the continued eligibility of the household, the amount of its coupon allotment, or its purchase requirement. [7 C.F.R. §271.4(a)(4)]

Certification periods for households in which everyone is on public assistance coincide with their welfare certification periods so that the rigorous eligibility verification process is not duplicated. [See 7 C.F.R. §§271.4(a)(4)(ii) and 271.4(a)(1)] For non-public assistance households, certification periods last normally only three months to assure that the most current information is used to determine continuous eligibility. [7 C.F.R. §271.4(a)(4)(iii)] However, "[c]ertification may be for less than 3 months when there is a possibility of frequent changes in household status." [7 C.F.R. §271.4(a)(4)(iii)(a)] Longer certification periods are the exception, rather than the rule, and are provided only "if there is little likelihood of change in household status," when "circumstances are expected to remain stable," or under other unusual situations when reliable current information equitably can be provided only on a more long-term basis. [7 C.F.R. §§271.4(a)(4)(iii)(b), (c) and (d)]

As a result, information concerning the Program's two eligibility criteria—(1) need, as determined by a household's income and resources [7 U.S.C. §2014(b)], and (2) willingness to register for, and accept, work [7 U.S.C. §2014(c)]—is kept as up-to-date as possible. Consequently, even if a household was not poor one year ago, it is entitled to food stamp relief if it currently falls within the income and resource eligibility standards. Similarly, a household, which previously refused to comply with the work requirement, is provided food stamp aid if it currently is willing to abide with the requirement. [7 C.F.R. §271.3(e)(2)(i)] In sum, the Food Stamp Program deals exclusively with individuals' current circumstances.

tax dependency provision sought to eliminate *presently* non-needy households from food stamp aid. Since households' participation in the Program is based on their present eligibility status, the provision necessarily had to be reasonably related to such households' recent circumstances. But, although the provision was aimed at excluding households which are currently unneedy, it completely missed the mark: even under optimum conditions, the provision is wholly unrelated to an assessment of a household's present needs. Indeed, the provision is not even reasonably related to a household's past needs.

From the language of the tax dependency provision, it would seem that it was designed to eliminate persons who are *currently* unneedy. The provision *allegedly* eliminates a household containing a "tax dependent" over 18 years of age *"during the tax period such dependency is claimed* and for a period of one year after expiration of such tax period." [7 U.S.C. §2014(b)] (emphasis added) *In actual implementation,* however, contrary to the Program's entire framework, the operation of the tax dependency provision bears absolutely no correlation to a "dependent" household's current circumstances: during the tax period of the dependency claim, the provision is entirely non-functional. This is because the vast majority of our nation's taxpayers file their Federal income tax forms in March or April for the previous tax year. [See Appendix B to this Brief, at 17b; see, also Appendix, at 81] By the time the tax dependency declaration is made, the tax year for which it was made will have ended several months earlier. Consequently, the tax dependency provision cannot operate on the basis of current circumstances. With regard to the year for which the tax dependency claim is made, therefore, the provision is an entire nullity.

Obviously, the tax dependency provision is totally at odds with the Food Stamp Program's framework of dealing with current needs, and the provision completely fails to fulfill its avowed purpose of ferreting out presently unneedy households from the food stamp rolls.[22] Indeed, while it is peradventure clear that the

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[22] That the tax dependency provision is so unreasonably unrelated to its statutory objective is hardly surprising. As in *Moreno v. United States Department of Agriculture*, 345 F. Supp. 310 (D.D.C. 1972), *prob. Juris. noted*, ___ U.S. ___, 93 S.Ct. 526 (1972), "[t]he fact is that we are confronted, as was the Secretary of Agriculture, with hasty, last minute Congressional action—'a child born of the silent union of legislative compromise.'" [345 F. Supp., at 315] Throughout the entire legislative history of the 1971 Food Stamp Act amendments [P.L. 91-671 (Jan. 11, 1971), 84 Stat. 2048], there was no discussion or debate at all on the tax dependency provision. Although the proposed provision's existence was listed in one sentance in each of five places [House Report No. 91-1402, 91st Cong., 2d Sess. (1970), at 8 and 16; Cong. Rec., 91st Cong., 2d Sess. (Daily Edition, Dec. 16, 1970), at H 11818 (Congressman Poage) and H 11861 (Congressman Quie); Cong. Rec., 91st Cong., 2d Sess. (Daily Edition, Dec. 31, 1970), at S 21682 (Senator Ellender)], and although its intended purposes seem clear [See appellants' Brief, at 10, n. 5], the provision was never discussed or debated. Indeed, when the House Committee on Agriculture—which formulated the measure—first brought the provision to the floor of the House on December 16 [see Cong. Rec., 91st Cong., 2d Sess. (Daily Edition, Dec. 16, 1970), at H 11818-H 11873], and when it returned after Conference to the House on December 30 [see Cong. Rec., 91st Cong., 2d Sess. (Daily Edition, Dec. 30, 1970), at H 12541-H 12548] and the Senate on December 31 [See Cong. Rec., 91st Cong., 2d Sess. (Daily Edition, Dec. 31, 1970), at S 21681-S 21694], the Congress was in a rush to adjourn before the New Year. Because of those time constraints, and since other parts of the Food Stamp Act amendments were much more controversial, Congress never actually considered the tax dependency provision.

provision's operation is wholly unrelated to a household's current or future needs, it is similarly clear that the provision's operation is not even reasonably related to a household's past needs. Since the Internal Revenue Code fails to define any minimum amount of support that must be provided as a condition for making a tax dependency claim—but merely requires that the taxpayer provide the "dependent" with over half of his support [26 U.S.C. §§151(e) and 152(a)]—a tax dependency declaration for the previous year implies nothing about the actual availability to nutritional adequacy that a "dependent" household had during that past year.

For households containing a non-student "dependent", the provision's operation is most definitely unrelated to an assessment of such households' past needs. Non-student "dependents"—who are not blessed with sufficient parental resources to go to college, and who are not, unlike their student counterparts, exempted from the work requirement [7 U.S.C. §2014(c)]—are by definition, based on their own income, poor: they may not have an income that exceeds $750 a year. [26 U.S.C. §151(e)] Consequently, *even under optimum economic conditions*, a parent need have provided his child with only $751 for the previous year to write him off as a "tax dependent." (Compare this cumulative annual income to the annual income eligibility standard of $2136 for a one-person household in the Food Stamp Program [37 Fed. Reg. 7724]; moreover, compare this income to the annual eligibility standard for larger households such as the ones many non-students, such as appellees, reside in. [See *supra*, footnote at 7.]) It is obvious, therefore, that the tax dependency provision's operation bears no reasonable relationship to a non-student "dependent" household's *past* needs, and that the provision eliminates

many impoverished households from Food Stamp Program participation while unneedy households are excluded *only* by coincidence.[23]

Even when the tax dependency provision *by coincidence* eliminates unneedy households from Food Stamp Program participation, it accomplishes such exclusions in a most unreasonable and arbitrary manner. Those unneedy households that *by coincidence* are denied food stamp aid due to the tax dependency provision *are excluded from Program participation for only about two-thirds of a year, while the provision permits them to receive aid during the rest of the year.* This results because the carry-over year of ineligibility almost always terminates approximately three months before the filing

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[23] Whereas the tax dependency provision eliminates many impoverished households from Food Stamp Program participation while unneedy households are excluded *only by coincidence*, scores of households which have real access to nutritional adequacy are unaffected by the provision. Children residing in households apart from their wealthy parents can continue receiving food aid if they convince their parents to refrain from declaring them as "dependents" in their income tax returns. Moreover, if children have other wealthy relatives who can provide them with support, and who even declare them as "dependents", such children are still entitled to food stamp aid. The consequent inequities are obvious: whereas, for example, appellee Lula Mae Murry's ex-husband provides appellee and her children with their total monthly income of $57.50 (which is all he can provide after he supports his new wife and their two children on a laborer's salary) and then rightfully filed tax dependency claims for appellees' household members [see Appendix, at 29-31], numerous affluent parents are providing their children with no support and, consequently, have made no dependency claim. Although appellee Murry's household has no real access to adequate food sustenance, and although the latter households apparently do, appellee Murry and her children are denied food stamp aid while the latter households receive such relief.

of the next income tax returns, leaving a hiatus of several months during which the tax dependency provision is inoperative. The following is illustrative:

> Wealthy taxpayer-parent B files his income tax returns every April (like most taxpayers [see Appendix B to this Brief, at 17b]). In April, 1972, he claimed his 18 year old child A as a "tax dependent" for calendar year 1971. Starting in mid-April 1972, A's household was denied food stamp aid because A had been declared a "tax dependent" for the previous year. On December 31, 1972, the carry-over year of ineligibility ended and, on January 1, 1973, child A's household became eligible again for food stamp relief. Food stamps were provided to A's household through mid-April, 1973, at which time taxpayer B's income tax returns for calendar year 1972—claiming child A as a "tax dependent"—were filed, thereby making A's household ineligible for the Food Stamp Program through December 31, 1973. (The same cycle occurs annually.)

Consequently, even when the tax dependency provision *by coincidence* accomplishes its alleged objective (of excluding unneedy households from Food Stamp Program participation), it accomplishes that objective in a most haphazard, unreasonable and arbitrary way.

The tax dependency provision's unreasonable relationship to its apparent purpose is further manifested by the requisite minimum age that a "dependent" must have to make the provision operate. It is only households with "dependents" *18 years of age or older* which are excluded from Food Stamp Program participation. But, contrary to the thrust of the tax dependency provision, most states in the country have terminated parents' general support obligations by their children's eighteenth

birthday. As appellees have set forth in Appendix A to this Brief, out of 51 nationwide jurisdictions (including the District of Columbia): 31 of them have terminated parents' general support obligations by the children's eighteenth birthday; two of them have terminated such support obligations upon the nineteenth birthday; and the other states have terminated those support obligations upon the twenty-first birthday. Consequently, in 30 states, and in the District of Columbia, the impoverished "tax dependent" who has just turned 18, thereby disqualifying his whole household from food stamp assistance, is legally unable to compel any further support from his parents. In two states the "tax dependent" household is denied food stamps even though the "tax dependent", if he is 19 years of age or over, is unable to compel further support from his parents. Finally, in the remaining 18 states, a "tax dependent" household is denied food stamps even though the 21-year old "dependent" is legally unable to compel further support from his parents. Clearly, this unreasonable and anomalous result could not have been actually intended by Congress. [Cf. *Lewis v. Martin*, 397 U.S. 552 (1970); *King v. Smith*, 392 U.S. 309 (1968).]

It is peradventure obvious, therefore, that the tax dependency provision does not reasonably accomplish its objective of excluding unneedy households from the Food Stamp Program. Moreover, it is similarly obvious that the provision does not reasonably foster greater parental responsibility for children's nutritional and economic well-being. Although *any denial of assistance to the poor, for whatever arbitrary reason, may—where possible—have a coincidental effect of causing more shared family financial responsibility*, it is clear that the tax dependency provision does not reasonably accom-

plish this purpose. Quite the opposite; the tax dependency provision, as is evident from the appellees, in actual operation tends to thwart that objective.

Appellee Lula Mae Murry, for example, is denied Food Stamp Program eligibility for herself and her children because her ex-husband provides appellee's household with their only income (and, therefore, properly has claimed appellee's household members as "dependents" for income tax purposes). Appellee's ex-husband cannot provide any further support to appellee's household because he also supports his new wife, and their two children, on a meager laborer's salary. [Appendix, at 29-31] As a result, then, of her ex-husband's $57.50 monthly support, appellee's five-person household has lost $132 in monthly food stamp benefits. [37 Fed. Reg. 7724] Similarly, appellee Victoria Alderete receives $105 in monthly support from her ex-husband (who, as a result, properly claimed appellee's household members as "tax dependents"). [Appendix, at 34-36] Consequently, appellee's six-member household has lost $152 in monthly food stamp allotments. [37 Fed. Reg. 7724] For appellees Murry and Alderete, therefore, it would be advantageous if their ex-husbands discontinued their provision of support.[24] In sum, the tax dependency

[24] For all of the other appellees herein, it is clear that the tax dependency provision's denial of food stamp aid had no positive effect on their families' support to them. For appellee Valdez, as an example, it is financially impossible for his parents to provide him with support; although they are ineligible for food stamp aid, appellee Valdez's parents are poor and are heavily in debt. [Appendix, at 50-52] And for appellees Lee and Nevarez, their children's fathers have disappeared and their whereabouts are unknown [Appendix, at 32-33, 60-62]; they, like all the appellees herein, will not receive greater support as a result of the tax dependency provision. Clearly, the provision frequently tends to frustrate, or is essentially irrelevant to, further family shared financial responsibility.

provision is not reasonably related to the fostering of greater family support for indigents and, indeed, it is not reasonably related to any legitimate governmental objective.

III.

THE TAX DEPENDENCY PROVISION VIOLATES APPELLEES' RIGHTS TO PROCEDURAL DUE PROCESS.

A. The Tax Dependency Provision Conclusively, Irrebuttably and Erroneously Presumes That a Household, Containing a "Tax Dependent" of the Previous Tax Year, Currently Has Access to a Nutritionally Adequate Diet.

As reflected in the Food Stamp Act's Declaration of Policy [7 U.S.C. §2011], Congress formulated the Food Stamp Program in order to alleviate hunger and malnutrition amongst currently needy households throughout the country. The Program was designed for "households whose income and other financial resources are determined to be substantial limiting factors in permitting them to purchase a nutritionally adequate diet." [7 U.S.C. §2014(a)] As a result, household eligibility for the Program was grounded on two criteria: (1) the household must be currently needy [7 U.S.C. §2014(b)]; and (2) certain members of the household must register for, and accept, suitable work. [7 U.S.C. §2014(c)]

To ascertain whether a household meets the first of these criteria—i.e., whether a household is currently needy—the Food Stamp Act requires the Agriculture Secretary to "establish uniform national standards of eligibility," which "at a minimum, shall prescribe the amounts of household income and other financial

resources, including both liquid and nonliquid assets, to be used as criteria of eligibility." [7 U.S.C. §2014(b)] Thus, if a household's income and resources are within the eligibility standards promulgated by the Agriculture Secretary, that household is determined to be currently needy and, if it complies with the work requirement, is entitled to food stamp relief. [See 7 C.F.R. §§271.3(b) and (c); 37 Fed. Reg. 7724]

The tax dependency provision is contained within the "need" eligibility subsection of the Food Stamp Act. [7 U.S.C. §2014(b)] As evinced by its location in the statutory framework, and as verified by its sparse legislative history, the tax dependency provision was enacted because Congress presumed that any household—containing a member who had been claimed as a "tax dependent" for the prior year—had sufficient current income and resources "to purchase a nutritionally adequate diet. . ." [7 U.S.C. §§2011, 2013(a), 2014(a) and 2016(a)] The House Report bears this out. [See House Report No. 91-1402, 91st Cong., 2d Sess. (1970), at 8.] In that report, the House Committee on Agriculture, which formulated the provision, compared the then-existing Food Stamp Act [P.L. 88-525] with H.R. 18582—the Committee's bill.[25] Under the category of "income eligibility," the comparison read as follows [House Report, *supra*, at 8]:

[25] In every single respect, the enacted subsection here at issue [7 U.S.C. §2014(b)] stems from and contains the exact language of the House Committee on Agriculture's bill. [H.R. 18582]

Item	Present law Public Law 88-525	H.R. 18582
9. Income eligibility	States set standard on maximum income, must be consistent with income standard used by State in own welfare program. Sec. 5(b)	Secretary to establish uniform standards in consultation with HEW. Households containing an 18-year-old who is taken as a tax dependent by another household are ineligible. Secretary directed to establish standards for Puerto Rico, Guam and Virgin Islands. Sec. 4(b)

The Committee clearly presumed that statutory "tax dependent" households had access to adequate income and were, therefore, not in need of food relief. [See, also, Cong. Rec., 91st Cong., 2d Sess. (Daily Edition, Dec. 16, 1970), at H11861—where Congressman Quie, in a chart, compared the pending bills and included the tax dependency provision in the division relating to maximum allowable resources for Program eligibility.] Indeed, as appellants forcefully pointed out [see appellants' Brief, at 10, n. 5], the tax dependency provision stemmed from Congressional concern about non-needy households participating in the Food Stamp Program; the provision was enacted as a measure for "defining those people who are needy." [Appendix B to this Brief, at 5b]

For Food Stamp Program purposes, the definition of need is clearly set forth. Currently the income eligibility criteria for the contiguous United States and the District of Columbia are:

Household Size	*Monthly Income*
1	$ 178
2	233
3	307
4	373
5	440
6	507
7	573
8	640
each additional person	+53

[37 Fed. Reg. 7724]

In addition, a household without a member 60 years of age or more may have only $1500 in resources; a household containing one or more members over 60 years of age may have $3000 in resources. [7 C.F.R. §271.3(c)(4)]

A household which contains no one claimed as a statutory "tax dependent" in the previous year can flexibly and reasonably demonstrate that it falls within this standard of need. In contrast, a household containing a "tax dependent" of the previous year is rigidly, conclusively and irrebuttably presumed to be neither poor nor in need of food relief, regardless of its actual impoverished circumstances. At no stage in the administrative process–whether it be during application intake [7 C.F.R. §271.4(a)(2)(i)], or during scheduled interviews between the agency and applicant [7 C.F.R. §271.4(a)(2)(ii)], or during the verification process [7 C.F.R. §271.4(a)(2)(iii)], or even during a "fair hearing" [7 C.F.R. §271.1(o)]–can a household, containing a "tax dependent" of the previous year, relevantly demonstrate that it is poor and without access to the funds prescribed in the Program's income-resource eligibility standard. Indeed, as Acting Food and Nutrition Service Administrator Howard P. Davis stated:

> [I]n the case of households which have initially been determined to be ineligible for participation in the program on the basis of tax dependency, there are no factual issues to be presented or challenged by the household at such a hearing, other than the issue of whether or not a member of the household has been claimed as a dependent child by a taxpayer who is not a member of a household eligible for food assistance (a fact the household, in most cases, already will have disclosed in its application). [Appendix, at 83; see, also, the fair hearing decision of appellee Valdez, Appendix, at 72-75]

As a result of the tax dependency provision, thousands of needy households summarily and inequitably have been denied essential food stamp relief. This results from the fact that the conclusive presumption–that a household is not needy if a member therein was declared a "tax dependent" for the previous year–is very frequently *erroneous*: there is simply no correlation between a household's *present* need for food relief and the fact such a household contains an individual who was claimed as a "tax dependent" *for the prior year*. The situations of the appellees clearly illustrate the irrebuttable presumption's fallacy: (1) the taxpayer may have made a fraudulent tax claim (as was the case with appellees Lee, Beavert and Nevarez); (2) the support provided or available to the "dependent" may be wholly insufficient "to purchase a nutritionally adequate diet" [7 U.S.C. §2014(a); see, also, 7 U.S.C. §§2011, 2013(a) and 2016(a)] (as is the case with appellees Murry and Alderete); (3) the taxpayer may be currently unable or unwilling to contribute to the "tax dependent", even though the taxpayer provided such support in the previous year (as is the case with appellees Valdez, Broderson and Schultz); (4) the members of the "tax dependent's" household may receive

absolutely or virtually no benefit from the taxpayer's contributions–either because the contributions are made solely to and for the "dependent" or because the contributions to the "dependent" are so small that they cannot be apportioned to other household members (as is the case with appellees Murry and Alderete).

All of the appellees, therefore, have been denied food stamp eligibility on the basis of the erroneous presumption that their households (by virtue of containing members claimed as "tax dependents" for the prior year) are not needy–a presumption they were not allowed to rebut or contest. Consequently, appellee Schultz was denied food stamp aid even though she is penniless and without any income; appellee Murry's five-member household cannot obtain food stamps even though her $57.50 monthly income is far below the $440 eligibility standard [37 Fed. Reg. 7724]; appellees Lee, Alderete and Nevarez cannot receive food stamps for their six-person households even though their monthly incomes–$23, $205 and $215 respectively–are far below the $507 eligibility standard [*id.*]; and appellees Valdez, Broderson and Beavert are denied food stamps for their three-person households even though their monthly incomes–$224, $110 and $224 respectively–are below the $307 eligibility standard. [*Id.*] None of the appellees have true access to nutritional adequacy.

B. The Conclusive, Irrebuttable and Erroneous Presumption Established By the Tax Dependency Provision Violates Appellees' Rights to Procedural Due Process of Law.

If a statutory presumption is rational, its application may be useful and is permissible if it is rebuttable.[26] [See *Heiner v. Donnan*, 285 U.S. 312, 318, 329 (1932), and cases cited therein.] However, it is a well-settled rule in Constitutional law that a statutory or administrative provision violates the due process clause of the Fifth and/or Fourteenth Amendments when it establishes a conclusive, irrebuttable presumption that may be inaccurate, and that adversely affects the rights of private parties.[27] Thus, in *Schlesinger v. Wisconsin*, 270 U.S. 230

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[26] In this case, even if the presumption—that a household containing a "tax dependent" of the previous year is neither poor nor in need of Federal food assistance—were rebuttable, it would still be impermissible. Since a previous year's tax dependency claim of a household member is wholly unrelated to a household's *current needs*; since a tax dependency claim fails to imply that the "dependent" received any minimum amount of support; since the dependency claim of one household member implies nothing about the support available to the "dependent's" entire household; and since persons over 18 years of age usually are unable legally to compel the provision of support from their parents, it is irrational even to rebuttably presume that households containing a previous year's "tax dependent" are neither poor nor in need of Federal food aid. It is wholly arbitrary and capricious, however, to make that presumption conclusive and irrebuttable.

[27] Procedural due process is applicable whenever governmental action denies or terminates an individual's rights or benefits. [See, e.g., *Goldberg v. Kelly*, 397 U.S. 254 (1970) (welfare benefits); *Perry v. Sindermann*, 408 U.S. 593 (1972) (teachers' employment contracts); *Bell v. Burson*, 402 U.S. 535 (1971) (driver's license and motor vehicle registration); *Stanley v. Illinois*, 405 U.S. 645 (1972) (custody of a child); *Escalera v. New York City Housing Authority*, 425 F.2d 853 (2d Cir. 1970), *cert. denied*, 400 U.S. 853 (1971) (housing benefits).]

(1926), the Supreme Court held that the State of Wisconsin's inheritance tax statute, which "conclusively presumed" that any gift made within six years of the donor's death was made in contemplation of death, and therefore subject to tax, was unconstitutional as violative of the due process clause in the Fourteenth Amendment.

A similar Federal taxing provision was held to violate the Fifth Amendment's due process clause in *Heiner v. Donnan*, 285 U.S. 312 (1932). After pointing out that it was not "material that the Fourteenth Amendment was involved in the *Schlesinger* case, instead of the Fifth Amendment," since the "restraint imposed upon legislation by the due process clauses of the two amendments is the same" [285 U.S., at 326], this Court provided a succinct explanation as to why it could not uphold conclusive statutory presumptions:

> [W]hether the . . . presumption be treated as a rule of evidence or of substantive law, it constitutes an attempt, by legislative fiat, to enact into existence a fact which here does not, and cannot be made to, exist in actuality, and the result is the same, unless we are ready to overrule the *Schlesinger* case, as we are not; for that case dealt with a conclusive presumption and the Court held it invalid without regard to the question of its technical characterization. This Court has held more than once that a *statute creating a presumption which operates to deny a fair opportunity to rebut it violates the due process clause of the Fourteenth Amendment.* [285 U.S., at 329] (emphasis added)

In *Hoeper v. Tax Commission*, 284 U.S. 206 (1931), this Court similarly invalidated a state statute which conclusively presumed that income earned by wives was actually income earned by their husbands. Under that statute, therefore, husbands would have had to pay more

in their income taxes. In striking down the statute, the Court said:

> We have no doubt that, because of the fundamental conceptions which underlie our system, *any attempt by a state to measure the tax on one person's property or income by reference to the property or income of another is contrary to due process of law as guaranteed by the Fourteenth Amendment. That which is not in fact the taxpayer's income cannot be made such by calling it income.* [284 U.S., at 215] (emphasis added)

While the *Schlesinger, Heiner* and *Hoeper* decisions reflect a prohibition of potentially erroneous, conclusive statutory presumptions in the tax law area, it is clear that the unconstitutionality of such presumptions is not limited to tax matters. In *Stanley v. Illinois*, 405 U.S. 645 (1972), this Court dealt with the claim of an unwed father whose children, upon the death of their mother, were declared wards of the State and placed in guardianship. The Court held that such a statutory scheme violated the father's Constitutional right to due process and equal protection in that it was based on an irrebuttable presumption that unmarried fathers in general, and Stanley in particular, were unsuitable and neglectful parents, and applied no such presumption in the case of married fathers, the latter being accorded a hearing on their fitness. In so ruling, the Court emphasized the inherent dangers of conclusive presumptions:

> Procedure by presumption is always cheaper and easier than individualized determination. But when, as here, the procedure forecloses the determinative issues of competence and care, when *it explicitly disdains present realities* in deference to past formalities, it needlessly risks running roughshod over

> the important interests of both parent and child. It therefore cannot stand. [405 U.S., at 656-657] (emphasis added)

The Court also pointed out how potentially erroneous, conclusive statutory presumptions can actually defeat a legislature's stated goals. In *Stanley*, the legislative goals were to protect "the moral, emotional, mental and physical welfare of the minor and the best interests of the community. . . ." [Ill. Rev. Stat. c. 37, §701-2] Comparing the legislature's stated goals to the provision under consideration, the Court said:

> We observe that the State registers no gain towards its declared goals when it separates children from the custody of fit parents. Indeed, if Stanley is a fit father, the State spites its own articulated goals when it needlessly separates him from his family.
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> * * * * *
>
> [N]othing in this record indicates that Stanley is or has been a neglectful father who has not cared for his children. Given the opportunity to make his case, Stanley may have been seen to be deserving of custody of his offspring. Had this been so, the State's statutory policy would have been furthered by leaving custody to him. [405 U.S., at 652-653, 655]

The findings in the *Stanley* decision are directly analogous to the present case. In this case, the tax dependency provision establishes a conclusive presumption that actually results in a frustration of the Food Stamp Act's stated goals. [See 7 U.S.C. §2011] The Food Stamp Act seeks to eliminate hunger and malnutrition by providing needy persons with food relief so that they can obtain nutritionally adequate diets. [See 7 U.S.C. §§2011, 2013(a), 2014(a) and 2016(a)] But

the tax dependency provision denies health-vital benefits to the impoverished appellees by means of a conclusive presumption that absolutely prohibits them from showing that they are the very persons for whom the Program was designed. Although the Program was intended to help such needy persons, the tax dependency provision irrebuttably presumes that the appellees, as members of households containing individuals claimed as "tax dependents" for the previous year, are currently not poor or in need of food relief and, therefore, renders them ineligible.

The decisions in the above-cited cases, as well as a multitude of other rulings by this Court and lower courts, leave no room to doubt that a conclusive statutory presumption, that may be erroneous, and adversely affects the rights of persons, is violative of procedural due process. See, e.g., *Bell v. Burson*, 402 U.S. 535 (1971), wherein this Court struck down a state statute that conclusively presumed a motorist to be guilty of faulty driving, thereby suspending his motor vehicle registration and driver's license, if such person got into an accident, was uninsured, and posted no bond (despite no evidence being adduced about the motorist's fault in the accident); *Carrington v. Rash*, 380 U.S. 89 (1965), wherein this Court struck down a provision in the Texas Constitution that prohibited members of the armed forces from voting, on the conclusive presumption that such servicemen were not *bona fide* residents;[28] *Dunn v. Blumstein*,

[28] In *Remillard v. Carleson*, 325 F. Supp. 1272 (N.D. Calif. 1971, *aff'd.*, 406 U.S. 598 (1972), a three-judge District Court struck down a California welfare regulation that provided that absence of a father, caused by his military duties, could never be "continued" absence so as to authorize Aid to Dependent Children payments. The Court held, contrary to the arguments of the state

405 U.S. 330 (1972), wherein this Court struck down a statute that conclusively presumed that people, who resided in a county for less than three months, and who resided in the State for less than one year, were not *bona fide* residents and, therefore, were not entitled to vote; *United States v. Bowen*, 414 F.2d 1268 (3d Cir. 1969), wherein the Court of Appeals struck down a regulation that conclusively presumed that military notices sent in the mails were received by the addressees. Cf. *Reed v. Reed*, 404 U.S. 71, 76-77 (1971).

The decision in *Bell v. Burson, supra*, is particularly instructive for this case. In *Bell*, the Court was confronted with a Georgia statute that required the suspension of the motor vehicle registration and driver's license of an uninsured motorist involved in an accident, unless he posted security to cover the amount of damages

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defendants, that the California regulation violated a Federal statutory provision. [42 U.S.C. §606] The Court pointed out that, in interpreting any statute, courts will presume, if at all possible, that Congress would not act in a manner offending due process. The Court then indicated that the California interpretation of the applicable Federal statutory provision raised "serious questions" under the due process and equal protection clauses. While it refused to rule on the Constitutional grounds, the Court found these arguments "sufficiently compelling to warrant the conclusion that Congress did not intend its program to be administered in the manner chosen by California." [325 F. Supp., at 1274] The Court concluded:

> . . . California may not deny benefits under 42 U.S.C. §606 to otherwise eligible children by means of the conclusive presumption embodied in the regulation . . . that a parental absence is not "continued" if occasioned by service in the armed forces of the United States. Some military absences may indeed be temporary. But other military absences give rise to the needs the statute was designed to fill. Each case must be considered in light of all relevant factors. [*id.*]

claimed by aggrieved parties in the accident report. Pursuant to that statute, any administrative hearing prior to suspension *excluded consideration of the motorist's fault or liability for the accident.* The only factors considered were whether the motorist or his vehicle were involved in the accident, whether the motorist failed to comply with the laws relating to posting of security, and/or whether the motorist failed to fall within any of the exceptions of the statute (such as if the motor vehicle was operated without the owner's permission). Upon a demonstration of these factors, but without adducing any evidence about the motorist's fault or liability for the accident, the motorist's license and registration were suspended.

Similarly in the "fair hearing" process accorded appellees and their class, no consideration is given to the question of whether, in fact, households containing a "tax dependent" of the previous year have access to nutritional adequacy. The only relevant evidence that may be adduced by appellees include: whether members of their household were declared as "tax dependents" for the past year; whether the "dependent" is 18 years or older; and/or whether the taxpayer-parent resides in another household which is ineligible for food stamps. [See Appendix 72-75, 82-83] Upon a demonstration of these factors, a household is altogether denied Federal food sustenance—regardless of that household's poverty, hunger and malnourishment. Particularly since the household's tax dependency status was not of its own doing and was essentially out of its control—whereas in *Bell,* the petitioner previously could have acquired driver's insurance, thereby stopping the operation of the Georgia statute—it is clear that the irrebuttable presumption in this case is at least as Constitutionally-defective as the one in *Bell.*

C. The Tax Dependency Provision's Conclusive, Irrebuttable and Erroneous Presumption Cannot Be Justified on the Basis of Administrative Convenience or Fiscal Expedience.

The only value of the tax dependency provision's irrebuttable and conclusive presumption is that its application, to a limited extent, is administratively convenient and fiscally expedient. A local food stamp stamp official can simply reject any food stamp applicant who states that his household contains a "tax dependent" of the previous year. No investigation into available income or resources is necessary, and any "fair hearing" requested by an applicant can be limited to whether the applicant's household contains a member claimed as a "tax dependent" for the past year. Although it is easier to conclusively presume that "tax dependent" households are not currently needy, thereby summarily denying them food stamp eligibility, the due process requirements are not satisfied by a mere showing of administrative convenience; the procedural due process protections of the Constitution are much more meaningful. As the Court stated in *Stanley v. Illinois, supra*:

> [I]t may be argued that unmarried fathers are so seldom fit that Illinois need not undergo the administrative inconvenience of inquiry in any case, including Stanley's. The establishment of prompt efficacious procedures to achieve legitimate state ends is a proper state interest worthy of cognizance in constitutional adjudication. *But the Constitution recognizes higher values than speed and efficiency. Indeed, one might say of the Bill of Rights in general, and the Due Process Clause in particular, that they were designed to protect the fragile values of a vulnerable citizenry from the overbearing*

> *concern for efficiency and efficacy which may characterize praiseworthy government officials no less, and perhaps more, than mediocre ones.* [405 U.S., at 656 (emphasis added)

Similarly, in *Carrington v. Rash, supra,* this Court was mindful that, by conclusively presuming that all military personnel were not *bona fide* residents of Texas (thereby denying them the right to vote), the Texas Constitutional provision saved election officials from difficult proof problems. Nonetheless, the conclusive, sometimes erroneous presumption could not be deemed Constitutional simply because it was administratively expedient. The Court stated:

> We recognize that special problems may be involved in determining whether servicemen have actually acquired a new domicile in a State for franchise purposes. We emphasize that Texas is free to take reasonable and adequate steps, as have other states, to see that all applicants for the vote actually fulfill the requirements of *bona fide* residence. But this constitutional provision goes beyond such rules. "[T]he presumption here is * * * definitely conclusive—incapable of being overcome by proof of the most positive character." (citing *Heiner v. Donnan,* 285 U.S., at 324) [380 U.S., at 96]

See, also, *Bell v. Burson,* 402 U.S. 535, 540-541 (1971); *Fuentes v. Shevin,* 407 U.S. 67, 90, n. 22 (1972); *Dunn v. Blumstein,* 405 U.S. 330, 350 (1972). Cf. *Reed v. Reed,* 404 U.S. 71, 76-77 (1971); *Gomez v. Perez,* ___ U.S. ___, 41 U.S.L.W. 4174, 4175 (U.S., Jan. 17, 1973).

The preservation of the fisc is also an unsatisfactory justification for implementing a conclusive and irrebuttable presumption that may be harmfully erroneous. The requirements of procedural due process are far more weighty than the saving of Program funds. As the Court stated in *Bell v. Burson, supra*:

> Nor is the additional expense occasioned by the expanded hearing sufficient to withstand the constitutional requirement. " 'While the problem of additional expense must be kept in mind, it does not justify denying a hearing meeting the ordinary standards of due process.' " *Goldberg v. Kelly*, 397 U.S., at 261, 90 S.Ct., at 1017, quoting *Kelly v. Wyman*, 294 F. Supp. 893, 901 (S.D.N.Y. 1968) [402 U.S., at 540-541]

See, also, *Fuentes v. Shevin*, 407 U.S. 67, 90, n. 22 (1972). Cf. *Shapiro v. Thompson*, 394 U.S. 618, 633 (1969).

In *Goldberg v. Kelly*, 397 U.S. 254 (1970), which held that welfare recipients cannot be terminated from welfare aid prior to the determination of a fair hearing, this Court carefully considered the countervailing interests of procedural due process and fiscal expendiency. The Court concluded that fiscal considerations, although of importance, cannot compromise indigents' rights to procedural due process:

> Appellant does not challenge the force of these considerations [poor people's need to vigilant protection of their due process rights] but argues that they are outweighed by countervailing governmental interests in conserving fiscal and administrative resources. These interests, the argument goes, justify the delay of any evidentiary hearing until after discontinuance of the grants. Summary adjudication protects the public fisc by stopping payments promptly upon discovery of reason to believe that a recipient is no longer eligible. Since most terminations are accepted without challenge, summary adjudication also conserves both the fisc and administrative time and energy by reducing the number of evidentiary hearings actually held.

> We agree with the District Court, however, that these governmental interests are not overriding in the welfare context. The requirement of a prior hearing doubtless involves some greater expense, and the benefits paid to ineligible recipients pending decision at the hearing probably cannot be recouped, since these recipients are likely to be judgment-proof . . . [T]he interest of the eligible recipient in uninterrupted receipt of public assistance, coupled with the State's interest that his payments not be erroneously terminated, clearly outweighs the State's competing concern to prevent any increase in its fiscal and administrative burdens. As the District Court correctly concluded, "[t]he stakes are simply too high for the welfare recipient, and possibility for honest error or irritable misjudgment too great, to allow termination of aid without giving the recipient a chance, if he so desires, to be fully informed of the case against him so that he may contest its basis and produce evidence in rebuttal."[29] [397 U.S., at 265-266]

[29] The Goldberg Court indicated that "[t]he extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be condemned to suffer grievous loss..." [397 U.S., at 262-263] Similar to the present case, therefore, the *Goldberg* Court held that the indigent-appellees' rights to due process should be vigilantly protected. The Court reasoned that the impoverished appellees in that case, as is true of the appellees in this case, were very much in need of relief to sustain their health and well-being and, consequently, were entitled to the fullest protection under the due process clause:

> For qualified recipients, welfare provides the means to obtain essential food, clothing, housing and medical care. Cf. *Nash v. Florida Industrial Commission*, 389 U.S. 235, 239 (1967). Thus the crucial factor in this context—a factor not present in the case of the black-listed government contractor, the discharged government employee, the taxpayer denied a tax

Certainly if fiscal and administrative considerations cannot impair indigents' procedural due process rights to a *prior hearing*, then such considerations should not expunge the impoverished appellees' rights *to a hearing*. Yet the conclusive and irrebuttable presumption in the tax dependency provision does precisely that: it prohibits appellees and their class from demonstrating–at any stage of the administrative process–that adequate food resources are not available to them. Since such a showing would not be administratively burdensome or cumbersome, and since administrative mechanisms are currently available to facilitate such a process [see 7 C.F.R. §§271.1(o), 271.4(a)(2)(i), (ii) and (iii); 7 U.S.C. §2019(e)(6)], no valid reason remains for the continued operation of the conclusive and irrebuttable presumption in the tax dependency provision. The provision unnecessarily and unconstitutionally violates appellees' rights to due process of law.

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exemption, or virtually anyone else whose governmental entitlements are ended–is that termination of aid pending resolution of a controversy over eligibility may deprive an eligible recipient of the very means by which to live while he waits. Since he lacks independent resources, his situation becomes immediately desperate. His need to concentrate upon finding the means for daily subsistence, in turn, adversely affects his ability to seek redress from the welfare bureaucracy. [397 U.S., at 264]

See, also, *Snaidach v. Family Finance Corp.*, 395 U.S. 337, 340-342 (1969); *Fuentes v. Shevin*, 407 U.S. 67, 89 (1972). However, even if no more vigilant protection were accorded appellees' procedural due process rights as a result of their indigency status, it is clear that the irrebuttable and conclusive presumption here at issue is violative of the Fifth Amendment.

CONCLUSION

For the foregoing reasons, the judgment of the District Court should be affirmed.

Respectfully submitted,

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APPENDIX A

STATE LAWS ON MAXIMUM AGE FOR MANDATORY GENERAL CHILD SUPPORT

States With 18 Years or Under as the Maximum General Mandatory Age for Parental Support (31)	Statutory and Case Law Citations
1. Alabama	Ala. Code, title 34, §90; *Atkins v. Curtis*, 66 So.2d 455, 458, 259 Ala. 311 (1958)
2. Arkansas	Ark. Stat. Ann. §§57-103 and 45-234; *Petty v. Petty*, 482 S.W.2d 119 (1972) (generally females to 18 and males to 21, but extraordinary circumstances exception)
3. California	Cal. Civil Code §§206 and 25; Penal Code §270(f) (continued support for those incapable of self-support narrowly interpreted, *Levy v. Levy*, 53 Cal. Rptr. 790, 245 Cal. App. 2d 341 (1966)–referring to "mentally retarded child")
4. Colorado	Colo. Rev. Stat. Ann. §43-1-1 (limits support to children under 16)
5. District of Columbia	D.C. Code §§11-1601 *et seq.*, 11-1602(e), and 11-1604 (in the case of male children age is 21); *Jones v. Jones*, 262 A.2d 601 (D.C. App. 1970)
6. Georgia	Ga. Code Ann. (1972 Supp.) §§74-104 and 74-105; *Newton v. Newton*, 222 Ga. 175, 149 S.E.2d 128 (1966)

7. Hawaii	Hawaii Rev. Laws §577-1 (1972 Supp.) (currently no statutory right to child support payments–repeal of Ch. 575, eff. Jan. 1, 1973)
8. Idaho	Idaho Code Ann. §§32-101, 32-1002 and 32-1003 (sets up reciprocal duties of support of "any poor person who is unable to maintain himself or herself by work"); criminal non-support, §18-401 (limited to children under 16); *State ex rel Cromwell v. Panzeri*, 380 P.2d 1064, 1065, 76 Idaho 211 (1955)
9. Illinois	Ill. Rev. Stat. Ch. 68, §24 (penal); Ch. 68, §101 (civil)
10. Iowa	Iowa Code §§252A 3(1), (2) and (3) (limits support to children under 17 eff. July 1, 1973, but parents *may* be liable if older children are likely to become a public chanrge)
11. Kansas	Kan. Stat. Ann. (1972 Supp.) (Ch. 161, §5, July 1, 1972) §§38-101, 60-1610(a) and 23-451 *et seq.; In Re. Robben*, 362 P.2d 29, 30, 188 Kan. 217 (1961)
12. Kentucky	KRS 405.030 (maximum age for statutory liability is 14); *Markham v. Markham*, 461 S.W. 545, 546-547 (1970), holds that under normal conditions the obligation to support a child terminates at the 18th birthday of the child
13. Maine	Me. Rev. Stat. title 15, §2502; title 19, §§211, 214 and 216
14. Maryland	Md. Ann. Code Art. 27, §88; Art. 72A, §1; Art. 88A, §45; *Jones v. Jones*, 262 A.2d 601 (1970)

15. Nevada	Nevada Rev. Stat. §§126.030 and 129.010 (female children until 18 years and male children to 21)
16. New Hampshire	N.H. Rev. Stat. Ann. §§460.22 and 460.23 (parents only required to support children under 16; liable for children between 16 and 21 if by reason of physical or mental infirmity they are incapable of supporting themselves); *State v. Carr*, 107 N.H. 477, 225 A.2d 178 (1966)
17. New Mexico	N.M. Stat. Ann. §§32-1-1 and 13-13-1; *State ex rel. Terry v. Terry*, 453 P.2d 206, 208, 80 N.M. 185 (1969)
18. North Carolina	N.C. Gen. Stat. §§14-322 and 14-325 (penal); §§50-13.4 and 48A-1 and 2 (civil)
19. North Dakota	N.D. Cent. Code §§14-09-08, 14-10-01, 14-09-22 and 14-09-10 (but a poor child may have to be supported up to age 21)
20. Ohio	Ohio Rev. Code §§3103.03 (civil) and 3113.01 (criminal) (but may be liable for handicapped children to age 21)
21. Oklahoma	Okla. Stat. title 10, §§4, 10 and 12; title 15, §13 (may be liable for support of impoverished older children)
22. Rhode Island	R.I. Gen. Laws Ann. §§15-11-5, 15-11-6 and 15-11-7 (may be liable for older children if such children are "unable to maintain themselves")
23. South Dakota	S.D. Code §§25-7-6 and 25-7-7; *McBride v. Lomheim*, 144 N.W.2d 564, 825 S.D. 263 (1966) (liable for older children "unable to maintain themselves by work")
24. Tennessee	Tenn. Code Ann. §§37-256, 39-202 and 23-1201

25. Texas	Texas Penal Code Ann. Art. 602; Civil Art. 4639a, §1; *Byrne v. Byrne*, 398 S.W.2d 432 (Tex. Civ. App. 1965)
26. Vermont	Vt. Stat. Ann. title 15, §202 (if child a student, support may be required to age 21); *Borkmann v. Comm. of Social Welf.*, 128 Vt. 561, 268 A.2d 790 (1970)
27. Virginia	Va. Code Ann. §§20-61 (criminal) and 20-79 (civil)
28. Washington	Wash. Rev. Code §§26.16.205, 26.28.010 and 26.20.030 (criminal); *Gaidos v. Gaidos*, 293 P.2d 388, 390, 48 Wash. 2d 276 (1956)
29. West Virginia	W.Va. Code §48-8-1 (criminal statute but allows for support payments to age 18)
30. Wisconsin	Wis. Stat. §§52.01 and 52.05
31. Wyoming	Wyo. Stat. Ann. §§14.1.1 and 14-18; *Wantulok v. Wantulok*, 214 P.2d 477, 483, 67 Wyo. 22, 21 A.L.R. 2d 572 (1950)

States With 19 Years of Age as the Maximum General Mandatory Age for Parental Support (2)	Statutory and Case Law Citations
1. Alaska	Alaska Stat. §§25.20.010 and 25.20.030 (but statutory duty of "parent and child to maintain each other . . . when poor and unable to maintain themselves")
2. Montana	Mont. Rev. Codes Ann. §§64-101, 61-104, 61-116, 61-112, 61-126 and 61-125 (penal)

States With 20 Years of Age as the Maximum General Mandatory Age for Parental Support (0)	Statutory and Case Law Citations
None	

States With 21 Years of Age as the Maximum General Mandatory Age for Parental Support (18)	Statutory and Case Law Citations
1. Arizona	Ariz. Rev. Stat. Ann. §§14-206 and 1-215
2. Connecticut	Conn. Gen. Stat. Ann. §17-320 (but there may be a further obligation of support where children are paupers and father is able to support them); *Darling v. United States*, 375 F.2d 843, 850, n. 14 (Ct. Cl. 1967)
3. Delaware	Del. Code Ann. title 13, §§501, 502 (penal) and 702 (civil)
4. Florida	Fla. Stat. §§744.03 and 744.13; *Fincham v. Levin*, 155 So.2d 883, 884 (Fla. App. 1st Dist. 1963)
5. Indiana	Ind. Ann. Stat. §§10-1401 and 38-116
6. Louisiana	La. Civil Code Art. 37 and Art. 227
7. Massachusetts	Mass. Gen. Laws Ann. Chap. 117, §9
8. Michigan	Mich. Comp. Laws §401.2
9. Minnesota	Minn. Stat. §§261.01 and 645.45 (3)
10. Mississippi	Miss. Code Ann. §§399 and 681
11. Missouri	Mo. Rev. Stat. §§475.010 and 475.025; *State ex rel Kramer v. Carroll*, 309 S.W.2d 654, 659 (Mo. App. 1958)

12. Nebraska	Neb. Rev. Stat. §38-101; *Waldbaum v. Waldbaum*, 171 Neb. 625, 107 N.W.2d 407, 415 (1961)
13. New Jersey	N.J. Stat. Ann. §§9:2-13 and 2A:4-18
14. New York	N.Y. Dom. Rel. Law §§2 and 32
15. Oregon	Ore. Rev. Stat. §§109.010, 109.510 and 109.100 (possible liability for older children who are "poor and unable to maintain themselves")
16. Pennsylvania	Pa. Stat. §§46:601 (65) and 48:131 (applicable only in divorce or separation proceeding)
17. South Carolina	S.C. Code Ann. §§15-1228, 15-1229 and 62-402
18. Utah	Utah Code Ann. §§78-45-2, 78-45-3, 78-45-4 and 78-45-9

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LULA MAE MURRY, et al.,
Plaintiffs

v.

Civil Action
No. 1412-72

THE UNITED STATES DEPARTMENT
OF AGRICULTURE, et al.,
Defendants

Washington, D.C.
July 19, 1972

The above-entitled cause came on for Hearing on Motion for Temporary Restraining Order before the HONORABLE GERHARD A. GESELL, United States District Judge, at 3:40 p.m.

APPEARANCES:

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Counsel for Defendants

PARTIAL TRANSCRIPT

[2] PROCEEDINGS

THE DEPUTY CLERK: Civil Action No. 1412-72, Murry, et al., v. The United States Department of Agriculture. Mr. Ronald F. Pollack, Mr. Roger A. Schwartz, Mr. John R. Kramer for the Plaintiffs. Mr. Peter J.P. Brickfield, Mr. John Harris, Mr. Robert Lowerre for the Defendants.

THE COURT: We are in open Court because the United States does not wish to follow the usual practice of considering a temporary restraining order in chambers.

You may proceed for the Plaintiffs.

* * * * *

MR. BRICKFIELD: May it please the Court, I am Peter Brickfield, representing the Defendants in this case.

The four criteria for the granting of interlocutory relief are well know to the Court. We contend no one of these four is met by the instant case. Initially, the maintenance of the status quo would be done violence by the granting of a temporary restraining order.

As the affidavit of Mr. Hekman shows, all states except Vermont are currently implementing the situation whereby those who are claimed as dependents and are over

eighteen years of age are not, and the household in which they reside is not eligible for food stamps. The courts go farther and require more proof before restraining a governmental program such as the Food Stamp Act.

[3] THE COURT: Well, that isn't what is before me. There isn't anything here involving a request to enjoin the operation of the Food Stamp Act.

MR. BRICKFIELD: The Plaintiffs are requesting Your Honor to fashion relief that would allow them to receive food stamps.

THE COURT: That is right, but not to enjoin the enforcement of the Food Stamp Act. That is the same argument you made in Moreno. The fact of the matter is that all that is involved is whether or not this amendment should be enjoined, not the statute.

Isn't that right? The Food Stamp Program is going to go on.

MR. BRICKFIELD: We contend the Court in Moreno was in error there. Although a protective notice of appeal has been filed, as far as I am informed, the Soliticor General has not formally determined the question of appeal in that issue. Even if the issue is just the question of the enjoining of this amendment, the amendment is in existence now; and to enjoin it would certainly do great violence to the status quo.

In Stratton and St. Louis Southwest Railroad Company, the Supreme Court held it to be an abuse of discretion when a District Court issued temporary relief which did not maintain the status quo but, in fact, changed it; and this, we contend, is the case in the instant matter.

[4] In addition to the problem with the status quo, on the question of irreparable injury, the most recent of all Plaintiffs to be denied food stamps was on May 26, 1972.

For three of the Plaintiffs, no dates were given. One was recently; one as far back as November of '71. To ask this Court to act on such a serious matter on such short notice, without the benefit of a three-judge court—which Congress has stated should be the body to act in questions of constitutionality of a statute—we think would be in error.

THE COURT: That is a new theory to me. The cases are legion where an individual judge protects the jurisdiction of the three-judge court by determining matters on temporary restraining orders. I don't understand what you are talking about.

MR. BRICKFIELD: To my mind, the jurisdiction of the three-judge court would still be here, were this Court not to grant a temporary restraining order. The three-judge court would be convened by the Chief Judge and they would sit upon this exact issue.

THE COURT: When would you be ready?

MR. BRICKFIELD: We would be ready within ten days, Your Honor.

THE COURT: It is purely a legal matter, isn't it?

MR. BRICKFIELD: I believe so, Your Honor. Several of the questions that the Court asked—

[5] THE COURT: I am trying to find out who the other judges are, to find our the question of the availability of the Court. I am leaving on vacation August 1. If this Court that is appointed is an available Court, in the sense that the other two Judges are here in the summer period, then it might very well be possible to go directly to the preliminary injunction stage perhaps on the last day of this month, which I think is a Monday.

MR. BRICKFIELD: I believe so, Your Honor.

THE COURT: That was one of the matters I wanted to inquire of you about, as to whether you felt, as I am

inclined to feel, that this is primarily a legal issue and not a factual issue and, therefore, something that could be presented on briefs and legal argument?

MR. BRICKFIELD: We feel that it is primarily a legal issue. We are endeavoring to attempt to elicit certain facts on these various Plaintffs and on the state plans. Because of the quickness with which this hearing came on, we don't know how many people are affected; we don't know what the states actually do in all instances. We are trying to find this out.

There are a number of questions that the Court asked Plaintiffs that we don't have the answers to right now. We are working on it right now.

So I would think even for this particular question, we should wait until the facts can fully come out. I think [6] there will be no issue of fact in this case but what the facts are have not totally been developed; but they will be developed clearly and very quickly, I feel.

On the question of success on the merits, we feel, initially, that the question is not one of a presumption of a party not being needy. It is a question of defining those people who are needy.

THE COURT: If there are ten people in the household and the father that is long gone gives the oldest son $10, and there is no other income in the family, all the other nine people get excluded from stamps?

MR. BRICKFIELD: That is so. This was considered–

THE COURT: I don't quite understand your point.

MR. BRICKFIELD: Well, the question is not the presumption of the need of the household; the question is whether or not this household meets the eligibility requirements as set forth by Congress. Congress has not presumed–

THE COURT: Don't I have to look at the purpose of the statute?

MR. BRICKFIELD: Yes, sir.

THE COURT: Well, the purpose of the statute is to take care of needy people; and the purpose of the statute is to further the distribution of agricultural products.

MR. BRICKFIELD: True. Congress found that–

THE COURT: In the case I gave you, for example, you [7] would have a family substantially with little or no income, which would clearly be needy, and they are simply excluded. Isn't that right? Isn't that the way it works?

MR. BRICKFIELD: They would be needy to the extent that they would need food, and so forth.

THE COURT: Yes.

MR. BRICKFIELD: But the question of their being needy is one which in certain areas Congress has chosen to facilitate through the Food Stamp Act.

THE COURT: If they said, if the children are red-headed, they won't get anything; would that be a proper classification?

MR. BRICKFIELD: I don't think that would, Your Honor.

THE COURT: Then why is this a proper classification?

MR. BRICKFIELD: I think a proper classification is whether or not they are needy.

THE COURT: On my supposition, the nine people are in need.

MR. BRICKFIELD: The question, secondarily, is–

THE COURT: That is why I don't understand what you are saying to me.

MR. BRICKFIELD: Well, the Congress has set forth limits, so many dollars with so many people in the family, is needy. I think we would have great difficulty to say that absolutely one dollar more would not be needy.

And yet Congress [8] has set a dollar limit. There is a dollar limit set on the Food Stamp Program. To say one dollar more or less takes a person out of the category of being needy, I think would be a very difficult question. The question of who is and who is not needy, I think, is a political question for Congress to decide.

Plaintiff Murry receives her aid from her husband through a court-order for support.

Congress has found in the debates—I haven't had a chance to fully research the legislative history—it incongruous to have a person benefiting from food stamps and at the same time a person in another household, who is not eligible for food stamps and, therefore, perhaps not needy, receiving a tax benefit of some $700 as an exemption. If, indeed, in the Murry family, Mr. Murry is not needy, he has money, Plaintiff would have the Federal Government take care of her rather than seek through the state court an increase in the amount that she is receiving from her ex-husband, through the child support and rent that she is receiving. The question perhaps is where these resources should come from.

THE COURT: Surely there are many cases where they are not going to come from anywhere.

MR. BRICKFIELD: This is true, Your Honor.

THE COURT: That is the problem of the arbitrariness of the classification, perhaps.

Now, what about your other points? You say on the [9] merits you will prevail, and the status quo will be changed. What else?

MR. BRICKFIELD: We also feel the irreparable injury issue is open to serious question, the Plaintiff having been—the most recent one—off food stamps for just short of two months, and others, we don't know the date. One of them, since November 1.

The last one is the question of the public interest; and this, in large part, in our minds, turns on whether the Court feels the relief granted in Moreno is proper. We feel that that was not the proper relief. The only relief that can be granted would be to eviscerate the Food Stamp Act; and we don't think that would serve the public interest. We do not think, when Congress has a group of people that they allow relief for, and they purposely and deliberately change that group to a different one, that a court can say that Congress should keep the group they previously had.

THE COURT: We do it all the time. I must have done it ten times in this Court. I mean, Congress passes an act that says that somebody who has been in the District of Columbia only six months will not be allowed to go to St. Elizabeths to get care. A three-judge court has thrown that out. There are a whole series of things. We haven't said, nobody gets care.

MR. BRICKFIELD: No, Your Honor, but you haven't said somebody who has been in here for one day gets care. What they [10] said is nobody can come into St. Elizabeths until they have been here for six months. You have struck down the requirement that you must be here for six months in order to get care. What you have left is it is without requirements to come in.

THE COURT: In this instance, the statute says that nobody is needy if someone has claimed someone as a dependent.

MR. BRICKFIELD: No, Your Honor, it doesn't. It says they may or may not be needy. We are not directing ourselves towards them. There are a lot of people in the country, I think, who may or may not be needy, to whom food stamp relief is not available. The example I used a moment ago, I think, is clear. Who is to say $400 is enough, as opposed to $399 a month? That one dollar

does not make the difference between being needy or not. Congress has to make limits. This, we feel, is a limit Congress has set through the political process. Congress fully considered the issue before the Court. They considered the fact that there would be certain people–

THE COURT: Now, that is interesting to me. I couldn't find it in the debates. Where is it? I never saw something that was slopped through with greater speed than this. Where is the consideration? I couldn't find in the debates any indication of how many people were affected, of how it was going to operate, of what its effect would be on the distribution of agricultural products, what it would be upon the number of people that were excluded. Those things aren't in the debates.

[11] MR. BRICKFIELD: Those things are not, no.

THE COURT: What do you mean by thorough consideration?

MR. BRICKFIELD: It appears the initial intent of Congress was to take those who were college students and their parents could afford to pay for them and not make them eligible for food stamps.

THE COURT: The Act didn't do that. It took a much broader swipe than that. It didn't just focus on that issue. I realize that is what activated them.

MR. BRICKFIELD: Yes.

THE COURT: But it includes a lot more than that, doesn't it?

MR. BRICKFIELD: Congress is aware of all those that it included at the time. This the debates do show.

THE COURT: Well then, what was the number?

MR. BRICKFIELD: They did not state a number, Your Honor, but they were aware that there would be people not in the college student category, when they passed the provision.

THE COURT: Yes, I think that is right.

So you say that the effect would be to destroy the entire Act, which would be against the public interest, clearly; that these people are not irreparably injured.

MR. BRICKFIELD: Any more than they would be in ten days, when a full Court can give a full consideration to the issues.

[12] THE COURT: Yes. And I would be changing the status quo; and that the merits are in your favor?

MR. BRICKFIELD: Yes, sir.

THE COURT: I think, in part, my views about this—which I want to mature in the light of this argument—would depend to some extent on the availability of the Court. It may be that I ought to attempt to get a Court that is available.

Perhaps now we will have some word about the Judges. Do we know the other Judge, yet, Miss Brown?

This is an indication of the problem. Here is one Judge who has been named, apparently, tentatively, who is going to be gone the month of September. I know he is here now, a hard-working Judge, and he would be available now. You see, I am going to be gone in August. He is going to be gone in September. You see what the process would be, because the three vacation months in this Court are July, August and September. Some of us go away each month. This Judge, at least, would be available this month. I think, perhaps, I really ought to make an effort, having gone this far, if the Judge doesn't turn up automatically as one that would be available this month, to see if the Chief Judge would consider naming someone who would be. That would mean that we could bring this matter on for a prompt hearing, in which you would file some affidavits, I take it.

MR. BRICKFIELD: Yes, sir.

THE COURT: And respond to the brief that the other [13] side has failed. My great preference would be to do it that way, if we can do it within those narrow time limits. I think that would be better all around. I am sure the Plaintiff would agree to that.

MR. SCHWARTZ: That is right.

THE COURT: If it can be promptly resolved, there is no point in interfering with the temporary restraining order and then perhaps having to reinstate, or something. I think the confusion would be very great.

MR. BRICKFIELD: Yes, sir.

THE COURT: My concern was that possibly we would be going over into November or into late October and then it seemed to me we had real problems that the Court would have to consider as to whether any interim relief was necessary.

MR. SCHWARTZ: Your Honor, excuse me. We still feel there will be irreparable harm even if you are able to convene this Court within a matter of weeks.

THE COURT: I understand that.

MR. SCHWARTZ: Might I address the Court, Your Honor?

THE COURT: You would have no difficulty with a hearing this month, if it could be arranged?

MR. SCHWARTZ: We are anxious to have a hearing as soon as possible.

THE COURT: And you have no further facts that you want to present?

[14] MR. SCHWARTZ: No, Your Honor. I have some comments on opposing counsel's comments.

THE COURT: I meant looking toward the preliminary injunction. You agree the preliminary injunction would be a legal issue?

MR. SCHWARTZ: Yes.

THE COURT: To be argued by counsel on both sides and briefed.

MR. SCHWARTZ: Yes, sir.

THE COURT: I will hear anything you have to say in response.

* * * * *

(Whereupon, at 4:25 p.m., the hearing was concluded.)

CERTIFICATE OF COURT REPORTER

I, Ida Z. Watson, certify that I reported the proceedings in the above-entitled cause on July 19, 1972, and the foregoing pages 1 to 14, inclusive, constitute the official partial transcript.

/s/ Ida Z. Watson
IDA Z. WATSON

[15] IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LULA MAE MURRY, et al.,
Plaintiffs,

v.

Civil Action
No. 1412-72

THE UNITED STATES DEPARTMENT
OF AGRICULTURE, et al.,
Defendants

Washington, D.C.
July 31, 1972

The above-entitled cause came on for Hearing on Motion for Preliminary Injunction and Defendants' Motion to Dismiss before the HONORABLE J. ROGER ROBB, United States Circuit Judge, the HONORABLE GEORGE L. HART, JR., United States District Judge, and the HONORABLE GERHARD A. GESELL, United States District Judge, at 2:00 p.m.

APPEARANCES:

RONALD F. POLLACK, Esq.,
ROGER A. SCHWARTZ, Esq.,
New York, New York
MICHAEL B. TRISTER, Esq.,
Washington, D.C.

Counsel for Plaintiffs

PETER J.P. BRICKFIELD, Esq.,
Department of Justice
JOHN HARRIS, Esq.,
ROBERT LOWERRE, Esq.,
Department of Agriculture

Counsel for Defendants

PARTIAL TRANSCRIPT

[16] PROCEEDINGS

JUDGE ROBB: Will you call the case, Madam Clerk.

THE DEPUTY CLERK: Civil Action 1412-72, Lula Mae Murry, et al., v. United States Department of Agriculture, et al. Mr. Pollack, Mr. Schwartz, Mr. Trister for the Plaintiffs. Mr. Brickfield, Mr. Harris and Mr. Lowerre for the Defendants.

JUDGE ROBB: Gentlemen, the Court will allow you half an hour a side, but you need not, unless you wish, take it all.

* * * * *

JUDGE ROBB: Mr. Brickfield.

MR. BRICKFIELD: Yes, sir. May it please the Court, the Government would feel and would like the Court case to be decided on the merits at this hearing.

We would like, initially, to refresh the Court with the strong presumption of constitutionality of actions of Congress. There is a very strong burden on the part of Plaintiffs to establish no constitutionality of a statute of Congress.

JUDGE GESELL: Does that apply to amendments?

MR. BRICKFIELD: Yes, sir, an amendment to a statute is an act of Congress. The cases refer to acts of

Congress as having a strong presumption of regularity; and I would think the amendment would be an act.

JUDGE GESELL: An amendment un-debated on the floor?

MR. BRICKFIELD: The amendment was debated on the floor.

[17] JUDGE GESELL: Very little, very little on the floor. Nothing in the reports. It is skipped over in the reports. Where does that presumption come from in this case?

MR. BRICKFIELD: The presumption comes from the fact when Congress does act, as it has in this particular case, that their acts are done rightly and properly, that they are public officials; it comes from the old common law presumption of regularity in the acts of a public official, that he is deemed to be acting properly. Members of Congress were deemed to be acting constitutionally when they passed this particular amendment to the Food Stamp Act of '64.

We would refer, initially, to the fact that the characterization of needy families is not the purpose of the Food Stamp Act. The preamble refers to low income families and not needy families and therein, I think, lies the biggest problem with an understanding of this case.

Congress first declares its intention to supplement low income families with certain food assistance. It then goes on in the original Act, not the amended Act but in the original Act to state that there shall be relief given to eligible households—always to eligible households, not needy families. Households are carefully defined in the original Act, in the new Act, where it was changed; and the Court did in Moreno construe part of that amendment to be unconstitutional. This decision, we feel, was wrong; and we suggest to the Court that it not be [18] followed.

The definition of "household" always referred to certain cooking facilities that people have, to their eating in common, to their common preparation of their food. These are restrictions. This is what eligibility meant to Congress; and we feel Congress has a right to say: We have eligible households and non-eligible households.

JUDGE ROBB: Does Congress have complete discretion in defining eligibility?

MR. BRICKFIELD: Not complete discretion. They must define eligibility within the constitutional requirements.

JUDGE ROBB: Congress couldn't say: No family containing a left-handed child could receive food stamps, could it?

MR. BRICKFIELD: No, sir.

JUDGE ROBB: Why not?

MR. BRICKFIELD: I think that that would be a violation of equal protection.

JUDGE ROBB: Irrational?

MR. BRICKFIELD: Yes, sir.

JUDGE ROBB: Contrary to the purpose of the statute?

MR. BRICKFIELD: Not necessarily contrary to the purpose of the statute but irrational.

JUDGE ROBB: Irrational.

MR. BRICKFIELD: And arbitrary.

JUDGE ROBB: The Plaintiffs say that what Congress [19] has done here is irrational, right?

MR. BRICKFIELD: Yes, sir.

JUDGE ROBB: You tell us why it isn't?

MR. BRICKFIELD: Yes, sir. We are dealing here with the area of welfare and economics. Congress has just so many dollars to appropriate to just so many people. As one of the Congressmen, in considering this stated: If we don't get rid of some of the abuses in the Food Stamp

Program, the taxpayers are going to rise up and demand an elimination of the Food Stamp Program. That, Congress did not want. Congress saw what they considered an abuse. A parent and a child—and I emphasize that it is not an unrelated person, but a parent and a child—a parent getting a break, shall we call it, getting the right to claim the child for tax purposes, and the child receiving food stamps. This duality of benefits, according to the ideas of Congress, was not proper. They deemed this to be an abuse.

JUDGE GESELL: Even a year after no dependency was claimed?

MR. BRICKFIELD: It is my understanding of Federal financing that it is actually this year's taxes that pay in significant part for some of next year's programs. We all, most people, anyway, file their income tax in April or some time in the beginning of the year for the previous tax year. Since there is no tax declaration at the time, within a tax year, but the declaration of dependency occurs the year after, Congress [20] has determined that when they are doling out, giving out these benefits, they are going to take the most recent information available. There is no more current information than our last tax returns. When January 1 comes of this year, we would then have a situation where if a child was not being claimed for '72 tax year, then, in January of '72 he would change his status. He was claimed for the '71 year. This would change then.

I would think that this would be the only way that Congress could effectively do this without a major change perhaps in the declaration provisions of the Internal Revenue Code.

JUDGE HART: Counsel, don't we really get down to this in this case: That Congress recognized a small evil. In an effort to excise that evil, instead of using a scalpel, it used a meat cleaver, and it just cut much too broad and deep throughout the needy people. Really, something it didn't intend to do. Certainly Congress never intended to cut out people like these Plaintiffs in this case.

MR. BRICKFIELD: When Congress acted, they acted on the set of facts before them. The Chicago Mercantile case we cite shows that these facts are the ones to be considered by the Congress. Admittedly, the Congressional Record legislative history is not as clear as we would like to have it. But the fact is that Congress did act; they did attempt to remove this [21] cancer within the operation of the Food Stamp Program. I think that the two considerations, the two decisions this Court would have to come to, in order to say that Congress was wrong, are, one, it was not an abuse; and I think that is a consideration you cannot come to—

JUDGE ROBB: What was not an abuse?

MR. BRICKFIELD: The college students receiving food stamps while their parents were still receiving tax deductions, the so-called voluntary poor, where students would associate themselves in a household and have their parents give them just so many dollars.

JUDGE HART: We don't have college students in these Plaintiffs in that category. This thing has cut these people who aren't related to college students or college students being supported. Furthermore, surely Congress if it was talking about taking people as a tax deduction must have meant legally taking them; and that doesn't seem to be provided for in any way here.

JUDGE GESELL: And the classification of college students can't be justified over the classification of other students of the same age. Suppose you are eighteen years

old and going to high school. Suppose you are not going to high school or college, and you have a wealthy parent. What is the basis for picking on college students? Haven't they, really, as Judge Hart suggests, thrown the baby out with the bath?

MR. BRICKFIELD: I do not think so, sir, no.

[22] JUDGE GESELL: That is what we need help from you on.

MR. BRICKFIELD: If I may attempt to answer them seriatim.

The college student, I believe, was not used by Congress for that reason. It would not be fair and equitable to distinguish between the college student and non-college student. All children over the age of eighteen were treated the same. All children over the age of eighteen, not living with their parents, and claimed as dependents by their parents, were affected the same way.

JUDGE ROBB: Yes, but you say this statute was intended to furnish food to low income families, correct?

MR. BRICKFIELD: Yes, correct.

JUDGE ROBB: Yet, you say, although you have a family, we will say, with eight or ten people in it, if one of those people happened to be taken as a tax deduction, the family is, ipso facto, not a low income family, right?

MR. BRICKFIELD: No, sir. They are not an eligible family. They may still be a low income family. I think it is more than semantics. It would be the same if you were to take a family of nine or ten people and have one person having a very good, high income, and you were to say, this household—now, we have a situation where the non-related situation is not applicable—if you were to take a group of ten people living together, that constitutes a household, that has one person [23] with an income of, say, $20,000 a year, that family might be ineligible; but let that one person leave—

JUDGE ROBB: Congress didn't say that. It said, just being taken as a tax deduction.

MR. BRICKFIELD: Yes, sir.

JUDGE GESELL: If the father, who is absent, gave the child $50 for Christmas, he would be a dependent, wouldn't he? In other words, it bears no relation to the economic circumstances of the family.

MR. BRICKFIELD: No, sir, I think not. In order to declare a deduction, you have to contribute over half of the child's support.

JUDGE GESELL: That is all he got, $50. That child got $50, period, all year, so he got $50.

MR. BRICKFIELD: Congress has deemed when the parent gets this benefit of the tax break, that the household of the over eighteen-year-old child is not eligible. Now, admittedly–

JUDGE ROBB: Where is that reasonable?

MR. BRICKFIELD: Because they attempted to get rid of a larger situation. Judge Gesell mentions a person getting $50. We have various extremes of this. Admittedly, we have a number of Plaintiffs here whose needs appear to be great. We have situations where every act of Congress perhaps affects those whom it didn't intend. I think if we have only eight Plaintiffs involved in this situation, it is very different from a broad-based [24] situation. I think Congress saw what they felt–

JUDGE ROBB: What do you say about this being a class action? I understand no order has been entered. What do you say on that point?

MR. BRICKFIELD: We do not take a position one way or another on that at this time.

JUDGE ROBB: You do not?

MR. BRICKFIELD: No, sir. We feel that Congress has the right to choose among various alternatives in exor-

cising these abuses. They could have eliminated the Food Stamp Program. They chose not to do this. I think they could have counted in the income of the person taking the child as a tax dependent for the purposes of that household. They chose not to do that. They just attempted to get rid of the duality of benefits.

The classification or the characterization of college students, I think, is just one example of the abuses Congress was aiming at. I don't think they are exclusively attempting to get at college students but they were attempting to get at the duality of benefits that people were receiving. Someone has to pay the bill. The taxpayers didn't like the situation; and in order to, perhaps, alleviate any situation where the taxpayers would have a hue and cry to eliminate the Food Stamp Program, Congress has determined to set up these eligibility criteria. I think like the criteria of cooking in common, preparing your own food, so, too, these criteria can be imposed. [25] It is very similar, I think when considering the low income aspect to the maximum income that can be allowed when a person is eligible. I don't think we can say that a family who receives one dollar more per month than the requirement, the maximum allowable income, is significantly less needy than the family who receives exactly to the dollar the maximum allowable income and is still eligible for food stamps. Yet, somewhere, somehow there must be restrictions; there must be eligibility requirements.

Congress has said that with certain formulas the Secretary is to determine these low income standards; and the Secretary has. So, too, Congress has said that certain people in fact are eligible.

I would say this is very similar to the Dandridge case, where the Court considered a maximum of $250 per family as an AFDC situation.

JUDGE GESELL: In administering the statute, you don't even look at the tax returns, do you?

MR. BRICKFIELD: No, sir.

JUDGE GESELL: So all the talk about the tax returns is a little off the mark, isn't it? You don't examine them to determine whether or not the dependency claim is validly made, whether the dependency claim is actually made, or anything else. You ask some of these poor people who come in and say, I think so; so they get no food stamps. They say, I think he did last [26] year, or, I don't know. There isn't any administration through the Internal Revenue Bureau of this system that makes it fair throughout the country. If the woman, when she goes in, says, No, he didn't, then she gets the food stamps.

MR. BRICKFIELD: Yes, sir.

JUDGE GESELL: So there isn't any use of the tax information to implement the program, in fact, is there?

MR. BRICKFIELD: No, sir. The use of the tax information it is believed by the Internal Revenue Service, for this purpose, would be illegal and contrary to their statutes, which provide a non-disclosure of tax returns.

JUDGE GESELL: Doesn't that suggest the further arbitrariness, then, in the standard that the Congress used?

MR. BRICKFIELD: I think not, sir. The question is, claimed, as opposed to any other situation, when a person is claimed; and you are entitled to a hearing on the fact of whether they are or are not claimed. That hearing you get. You are entitled to a hearing on whether the parent taxpayer is or is not of an income that would make him eligible for food stamps. These hearings you get. But once that parent claims the child for income tax purposes, he receives that benefit and, therefore, the duality of benefit.

JUDGE GESELL: He is no where around.

MR. BRICKFIELD: He is given some money.

JUDGE GESELL: He is gone; he is long gone; he is not [27] before that hearing. Nobody knows where he is or who he is or who is shacked up with or what he is doing. Isn't that right? The person that is in the hearing is the lady that is home with a bunch of young kids, as I understand this case.

MR. BRICKFIELD: Yes, sir.

JUDGE GESELL: Not the man who claimed the dependency. He is gone. Is that right?

MR. BRICKFIELD: That is under the situation—

JUDGE GESELL: What do you mean about this hearing? He is not there.

MR. BRICKFIELD: Under the situation, as we have it by these few Plaintiffs, the man is not there. This woman comes in. If she says she was not claimed, her word is taken. If she says she was claimed and she says she knows, then that word is taken.

JUDGE GESELL: Then the statute operates.

MR. BRICKFIELD: Then the statute operates. The big problem comes, of course, where the woman says, I do not know. At this juncture, an effort is made to find out what the facts are. They write a letter to the departed parent to find out the situation.

The hearing that she is allowed, though, goes to the two factual issues that are before the food stamp office, the local state-operated food stamp officer. I would think that she, therefore, does receive the hearing, as necessitated or as ordered under the laws concerning due process.

[28] The situation where she is claimed and the claim was invalid, I think is one of the problems where we have Congress using its discretion to decide which way they

are going to attack the problem. They could have stated that no one who has a child who is receiving food stamps can take that child—receiving food stamps out of their household can take that child as a tax deduction. That, I think, they could do, just as they could say that no child whose parent is claiming them can receive food stamps. They don't want this duality. You just cannot have your cake and eat it. Congress chose one of several different ways to take care of this.

JUDGE HART: You mean the parent can't have the cake and the child eat?

MR. BRICKFIELD: I think my aphorism was perhaps poorly chosen under the circumstances here. We think you cannot have the duality of benefits; and we think that stopping that duality is a valid purpose for the Congress to go about, a valid congressional intent. If Congress intended it to be so, we think they have chosen a legitimate and a rational way to go about it. These, we feel, are the criteria to be used in this case. They have defined "households." They have defined them carefully. They saw abuses, and the abuses they attempted to eliminate.

We feel that any situation concerning the associational rights would be clearly analogous to a situation where one member of a family, which we often have, is the one having enough [29] income, and if that one member of the "household" has the income, then the entire household could become eligible if that person were to leave. This, I do not think is wrong, to set a maximum income to define who receives food stamps.

JUDGE ROBB: But that is not what Congress did, is it?

MR. BRICKFIELD: No, sir. Congress said: We don't want duality and, therefore, if somebody is claiming you

as a tax deduction, under certain circumstances, you cannot get food stamps. I think Congress has a right to stop the duality; and I think they chose a very clear, concise and rational way to do it.

JUDGE GESELL: But who is the "you"? The "you" isn't the taxpayer.

JUDGE ROBB: And the "you" isn't the person taken as a tax deduction.

JUDGE GESELL: It is neither of those people.

MR. BRICKFIELD: Were Congress to take the taxpayer and not allow the taxpayer to take the deduction, we would not be here. We would be in Tax Court with a taxpayer who is claiming the right to take the deduction, saying: I didn't get the food stamps. The over-eighteen-year-old child got the food stamps and I have a right to take my tax deduction. We would have that case. It is a question of balancing. Congress decided, in its discretion, which way to go. It does not seem to be argued that Congress does not have the right to attempt to avoid abuses, to [30] attempt to avoid duality of benefits. It is a question of, did they choose the right method. It is not the posture of courts to seek to second-guess a discretional decision of the Congress.

JUDGE ROBB: So long as it is reasonable.

MR. BRICKFIELD: So long as it is reasonable.

JUDGE ROBB: Do you agree to that?

MR. BRICKFIELD: Yes, sir.

JUDGE ROBB: So isn't the question here whether what Congress did is a reasonable method or not? Isn't that right?

MR. BRICKFIELD: Yes, sir, I would say that is very clearly put.

If the Court has no more questions—

JUDGE HART: Counsel, have you ever been in the Service?

MR. BRICKFIELD: No, sir.

JUDGE HART: Well, you wouldn't understand this, but you have told us what Congress aimed at. Whoever was marking the target was surely waving Maggie's drawers—meaning, a complete miss.

* * * * *

(Whereupon, at 2:45 p.m., the hearing was concluded.)

[31] CERTIFICATE OF COURT REPORTER

I, Ida Z. Watson, certify that I reported the proceedings in the above-entitled cause on July 31, 1972, and the foregoing pages 15 to 30, inclusive, constitute the official partial transcript.

/s/, _____
IDA Z. WATSON